

# International Co- Production and Collaborative Agreements, the Case of the Finnish Film Industry

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**Pia Naarajärvi**

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International Co-Production and Collaborative Agreements, the Case of the Finnish Film Industry

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An often-used global model of international business (IB) cooperation in the film industry is ‘international film co-production’, consisting of two or more production companies from at least two different countries jointly producing a film. Based on their characteristics, international film co-productions can strongly be considered as international alliances between production companies, mainly coordinated and regulated by collaborative agreements called ‘co-production agreements’. Accordingly, international film co-productions are not only interesting from the IB perspective, but also from the legal perspective, since there are both business and legal challenges relating to such IB cooperation.

Regardless of the relevant topic, there is still little knowledge about the use of collaborative agreements in international alliances obtained through multidisciplinary study combining business and legal studies, and more specifically on how one specific international alliance is structured, based on, and managed by an alliance contract, which contractual provisions are included in the contract, and how the design of such contract could be approached and further applied to the film industry. The purpose and objective of this study is to contribute to the understanding of international alliances based on and regulated by alliance contracts, including various business and legal issues to be agreed upon between the alliance partners and influenced by the international legal environment, in the context of the Finnish film industry as the case, international film co-production as the international alliance, and co-production agreement as the alliance contract.

This doctoral thesis explores the research topic through the case of the Finnish film industry by examining international film co-productions as alliances, the use and design of co-production agreements as a basis for such international film co-production alliances, and the relevant and applicable legal regulation having influence on such alliances and co-production agreements. Moreover, this study follows a qualitative single-case study design, the primary empirical source of data consisting of ten interviews carried out in Finland in which Finnish film producers were the interviewees.

As contributions, this multidisciplinary study enables the exploration of the research area from an extensive perspective, thereby contributing to the research on alliance contracting and the film industry. Based on the literature review and the legal structure, a conceptual framework is proposed for understanding international film co-production alliances based on co-production agreements and influenced by the different legal regulation. Furthermore, based on the empirical findings of this study, a process model is also proposed in order to identify different phases of the design of a co-production agreement from business and legal perspectives, one to be applied to international film co-productions in general, and the other to be applied to the Finnish film industry.

**Keywords** International alliances, international film co-productions, collaborative agreements, co-production agreements, alliance contracts, legal regulation, law, the film industry

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## ABSTRACT

An often-used global model of international business (IB) cooperation in the film industry is 'international film co-production', consisting of two or more production companies from at least two different countries jointly producing a film. Based on their characteristics, international film co-productions can strongly be considered as international alliances between production companies, mainly coordinated and regulated by collaborative agreements called 'co-production agreements'. Accordingly, international film co-productions are not only interesting from the IB perspective, but also from the legal perspective, since there are both business and legal challenges relating to such IB cooperation.

Regardless of the relevant topic, there is still little knowledge about the use of collaborative agreements in international alliances obtained through multidisciplinary study combining business and legal studies, and more specifically on how one specific international alliance is structured, based on, and managed by an alliance contract, which contractual provisions are included in the contract, and how the design of such contract could be approached and further applied to the film industry. The purpose and objective of this study is to contribute to the understanding of international alliances based on and regulated by alliance contracts, including various business and legal issues to be agreed upon between the alliance partners and influenced by the international legal environment, in the context of the Finnish film industry as the case, international film co-production as the international alliance, and co-production agreement as the alliance contract.

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As contributions, this multidisciplinary study enables the exploration of the research area from an extensive perspective, thereby contributing to the research on alliance contracting and the film industry. Based on the literature review and the legal structure, a conceptual framework is proposed for understanding international film co-production alliances based on co-production agreements and influenced by the different legal regulation. Furthermore, based on the empirical findings of this study, a process model is also proposed in order to identify different phases of the design of a co-production agreement from business and legal perspectives, one to be applied to international film co-productions in general, and the other to be applied to the Finnish film industry.

In summary, by studying international film co-production alliances and co-production agreements as alliance contracts from the Finnish film industry perspective as a multidisciplinary study that combines international business and legal perspectives using a qualitative case study methodology, this doctoral dissertation contributes to the alliance literature and theory by developing a conceptual framework of an alliance contract's

business and legal environment and a process model representing the design of an alliance contract combining business and legal perspectives.

Keywords: international alliances, international film co-productions, collaborative agreements, co-production agreements, alliance contracts, legal regulation, law, the film industry

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Helsinki, January 2011

Pia Naarajärvi

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## **LIST OF KEY LEGAL REGULATION**

### **International Law**

European Convention on Cinematographic Co-production  
European Treaty Series – No. 147 (Strasbourg, 2.10.1992)  
+ Appendices I and II + Explanatory Report of the Council of Europe

Film and Television Co-production Agreement between the Government of the Republic of Finland and the Government of Canada  
Treaty Series of the Statutes of Finland, 24/1999 (Statute of Finland No. 388/1999)

Agreement concerning Cinematography between the Government of the Republic of Finland and the Government of the Republic of France  
Treaty Series of the Statutes of Finland, 7/1983 (Statute of Finland No. 214/1983);  
English translation: United Nations Treaty Series, Vol. 1317, No 21935

Directive of the European Parliament and of the Council of the European Union on rental right and lending right and on certain rights related to copyright in the field of intellectual property  
2006/115/EC, Official Journal L 376 of 2006

Regulation of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I)  
Reg 593/2008/EC, Official Journal L 177 of 2008

Council Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters  
Council Reg 44/2001/EC, Official Journal of L 012 of 2001

Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters 1968  
Official Journal C 59/1 of 1979

Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters of 1988  
Official Journal L 319 of 1988

### **Finnish Law**

Contracts Act  
228/1929 (Laki varallisuus oikeudellisista oikeustoimista)

Copyright Act  
404/1961 (& Decree 574/1995) (Tekijänoikeuslaki & -asetus)

## Rules and Regulations of Financiers

Regulations for the support of co-production of full-length feature films, animations and documentaries

Eurimages - European Cinema Support Fund /

Council of Europe

Regulations in effect from January 1, 2011

The MEDIA Programme Guidelines

Support for the development of single projects &

Support for the development of a slate of projects

Decision No 1718/2006/EC of the Parliament and of the Council, Official Journal of the EU 2007/C 204/05; the most recent (by Dec 31, 2010) Call for Proposals EACEA 25/2010

Support Guidelines

Nordisk Film & TV Fond

Guidelines in effect from January 2011

Support Guidelines for Film Production Support

The Finnish Film Foundation

Guidelines in effect from January 1, 2009

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# 1. INTRODUCTION

This *first* chapter of this doctoral thesis introduces the research topic by presenting the background of the study, the research problem and gap, research objectives and questions as well as the key concepts and limitations, in order to create a solid basis for the study. To conclude this introductory chapter the overall structure of the study is presented.

## 1.1. Background of the Study

Internationalization has been and continues to reshape the world economy. Firms aim to internationalize their businesses in order to be able to compete in the global market; a feature that also includes firms representing the film industry. The film industry has already been international for many decades, while film production companies worldwide have created different kinds of international business operations. There are various operation methods from which firms may choose to conduct business in foreign markets (Luostarinen & Welch, 1997). Over the past few decades there has been an enormous increase in the formation of international alliances and in the research efforts devoted to understanding such alliances (Inkpen, 2001). Inter-organizational arrangements such as alliances and long-term contracting have become significant mechanisms through which firms exchange products, services and knowledge (see e.g. Argyres & Mayer, 2007; Lane & Lubatkin, 1998; Larsson et al., 1998; Mowery et al., 1996).

There are various reasons why film production companies also seek and are involved in international business cooperation. In general, one reason has been the possibility to make different kinds of films with different combinations of filmmakers, producers or financiers in the field, using different languages, and so on. The majority of international cooperation in the film industry has been initiated in order to finance film productions through raising finance from more than one source (Alberstat, 2000). As financial advantages for European producers, they can take advantage not only of the various European funding schemes, but also of the state, regional and local subsidies that exist in many European countries (Alberstat, 2000). Moreover, international business cooperation in the film industry has also been supported by various benefits achieved by film

producers relating to capital, know-how, regulations, costs, taxes, etc., which benefits may play a critical role, whether in production, finance, distribution and/or marketing of films.

An often-used global model of international business cooperation in the film industry is 'international film co-production'; defined as "a film with two or more producers from at least two different countries" (Kohvakka & Huttunen, 1997:54). In general terms, a film co-production can be described as any type of production that involves more than one party in the production process, through partnership, joint venture or any other means of cooperation (Neumann & Appelgren, 2002). Aside from the obvious financial advantages of international film co-production, it has been said that such co-production provides a unique opportunity to enrich the quality of programming through cross-fertilization of creative talents and ideas across different European nations (Alberstat, 2000). As pointed out by Enrich (2005), international film co-production makes it possible to combine forces and consequently achieve a work that either of the co-producers alone would find it difficult to achieve in any other way.

In order to reflect that the entertainment industry (including films) is continuously a great worldwide business, for example, entertainment has consistently been one of the largest net export categories for the United States (estimated to be at least USD 9 billion in 2006) and at the wholesale level generating annual revenues exceeding USD 300 billion in the U.S. (Vogel, 2007). Based on the provisional data available, the European Audiovisual Observatory<sup>1</sup> has estimated that a total of 1168 feature films (including feature documentary films) were produced within the member states of the European Union (the EU) and a total of 209 feature fiction films were majority co-produced by a European Union member country in 2009<sup>2</sup>. During 2005-2009 the numbers of feature films produced in the EU have been the following: 911 in 2005, 1043 in 2006, 1044 in 2007, 1140 in 2008 and 1168 in 2009 (the latter a new record high). This data also include the production figures from the new EU member states and has been adjusted accordingly for the said period. Based on the numbers of the European Audiovisual Observatory, the three most active EU countries in international film co-productions during the years 2005-2009 have been

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<sup>1</sup> The Observatory is a European public service body comprised of 36 member states and the European Community, represented by the European Commission.

<sup>2</sup> Estimating the total volume of production of feature films in the EU remains difficult, chiefly due to the risk of double counting of co-productions and to differing national methodologies for the collection of the data. *Press Release of the European Audiovisual Observatory of May 6, 2010.*

France, Spain, and Germany followed by Belgium, the United Kingdom, and Italy. As a comparison to the EU, 677 national feature films were produced in the United States and 448 national films were released in Japan in 2009.<sup>3</sup>

Finland has also been increasingly involved in such international film co-productions, but the uncertainty of both business and legal issues has affected the presence of the Finnish production companies in international film co-productions. In general, the film production companies tend to be rather small in Finland and their own investments in film co-productions are modest, and therefore, the making of films has been strongly dependent on public support money. In Finland, public support money is mainly granted by the Finnish Film Foundation, and since the production support from the Finnish Film Foundation is limited, the need for other financing is obvious. Therefore, regardless of pre-selling e.g. television rights of the film, Finnish film production companies tend to look for opportunities to participate in international business cooperation in order to obtain greater finance for their films as well as to look for international distribution and recognition for their films. Finland has already been increasingly involved in international film co-productions, whether participating with greater or smaller financial or other efforts. Due to the limited amount of financing contributions compared to other countries, Finnish film production companies have often participated in international film co-productions as a co-producer or as a so-called associate producer and received the distribution and exploitation rights of the film for Finland.

International film co-productions as such are challenging international business operations. Based on their characteristics, international film co-productions can strongly be considered as international alliances between production companies that cooperate in producing, exploiting, distributing and/or in any other way operating regarding a specific film. It is not only international film co-productions that are interesting from the international business perspective, there are both business and legal challenges to be met when dealt with international film co-productions as international business operations. These are challenges this particular study go into. As pointed out by Harbison and Pekar (1998), every alliance, such as an international film co-production, is not just a business undertaking, but also an exercise in business law. These international film co-productions are mainly coordinated and regulated by collaborative agreements called ‘co-

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<sup>3</sup> Focus 2010, *Release of Marché du Film on World Market Trends*, 2010; and *Press Release of the European Audiovisual Observatory* of May 6, 2010.



production agreements'. Such co-production agreements are entered into by and between the co-producing partners consisting of joint agreement on all the different issues regarding the international film co-production in question. As argued by Neumann and Appelgren (2002:3), "just as every film is unique, so every co-production agreement is a singular creation". The authors further point out that it would be a lot easier if there was such a thing as a standard co-production agreement, but the reality is that the intricate web of issues under negotiation can vary widely across films (Neumann & Appelgren, 2002).

This study originated from the fact that the author of this study has been working as a legal and business management consultant specializing in the film and television industry. In addition to a degree of Master of Science in Economics, the author holds the degree of Master of Laws, which explains the strong interest in both business and legal affairs and a multidisciplinary approach to studying. While working within the environment of international business cooperation in the film industry, the author has faced the challenge of the Finnish film production companies: to manage both business and legal issues to achieve the best possible solutions and successful outcomes. The personal background of the author provides a rare and valuable basis for this study, and the study is particularly inspired by the work experience of the author with regard to the challenge of understanding business and legal issues affecting international film co-productions. Since 2001, the author has worked closely with several international film co-productions, which has provided concrete experience on the subject of this study and also benefited the study. However, all the statements relating to the author's own work experience are precisely referred to as such in this doctoral thesis.

## **1.2. Research Problem and Gap**

The research problem of this study relates to the difficulties that the Finnish film production companies face in creating international cooperation with foreign production companies. Many reasons have been presented to explain the low degree of international involvement of the Finnish film production companies, including the strange language, small size of companies, limited financial resources, difficult marketing, etc. However, it is noteworthy that Finnish film is definitely not internationally unknown, Finnish films have achieved much recognition abroad, and the professional skills of Finnish filmmakers are acknowledged to be of a high level among

professionals worldwide. Some suggestions have been put forward, for example, that the internationalization strategy of the Finnish content production companies could move towards close cooperation with technology companies operating in the international market (Kallio, 2001). Nevertheless, Kallio (2001) has also argued that the international markets are open for Finnish companies. The challenge seems to be to find innovative solutions and long-term goals in the establishment process.

Particularly, there is a lot of uncertainty on both business and legal issues relating to international cooperation in the Finnish film industry, which has affected the presence of Finnish film production companies in international film co-productions. When entering into an international film co-production alliance, the film production companies should understand not only the business but also the legal issues to be taken into consideration. International film co-productions involve a variety of different business and legal issues to be agreed upon, and the film production companies as alliance partners should also be aware of the legal regulation relating to such co-productions (see e.g. Neumann & Appelgren, 2002; Baker, 1995; Dally et al., 2002; Alberstat, 2000). Not only is the management of international film co-productions challenging from the international business perspective with regard to Finnish film production companies, but especially the international legal environment makes such international cooperation in the Finnish film industry complex. This has not only affected Finnish companies, it is also a concern for companies representing other countries. Consequently, it is argued here that increasing the knowledge within the film industry would be supportive for production companies to be involved in international cooperation.

Based on the discussion presented above, the need for comprehensive knowledge on the research subject is obvious. Regardless of the relevant topic, there is a lack of research on the subject, which makes this particular study important. The research area is definitely not completely unexamined, since both the operation forms of international business operations (see e.g. Mead, 1998; Ball & McCulloch, 1996; Mendenhall et al., 1995; Punnett & Ricks, 1992) as well as the legal issues affecting the business environment (see e.g. Moore, 2000; Vogel, 2007; Baumgarten et al., 1992) have been studied in general. Moreover, past research on international cooperation also includes international co-production and collaborative agreements (see e.g. Contractor & Lorange, 2002; Luostarinen & Welch, 1997; Bartlett & Ghoshal, 1996; Buckley & Casson, 1988) as well as alliances (see e.g. Shenkar & Reuer, 2006; Doz & Hamel, 1998; Harbison

& Pekar, 1998; Koza & Lewin, 1998; Seristö & Vaara, 1999). There are also business law studies (see e.g. Keenan & Riches, 1995; Savage & Bradgate, 1993) and studies have been carried out on business and alliance contracts (see e.g. Reuer & Ariño, 2007; Argyres & Mayer, 2007; Ariño & Reuer, 2004; Poppo & Zenger, 2002; Frankel et al., 1996). Regarding legal regulation, it is available just based on its public nature.

All the previous research naturally provides a basis for this study on international film co-productions. However, this study differs from previous studies in three fundamental ways. *First*, it is argued here that business and legal studies have not been combined to increase understanding of collaborative agreements used in alliances and furthermore applied to international film co-productions, which makes this study unique. The value of multidisciplinary studies has been recognized e.g. by Argyres and Mayer (2007) who argue that while legal scholars study contracting issues extensively, like organizational scholars, they have not tended to discuss firm-level contract design capabilities per se; i.e. the challenge is to combine legal and business perspectives. Luo (2002:903) has also argued that “contracts and cooperation are interrelated because a contractual arrangement serves as a framework within which cooperation proceeds” and further states that “contracts and cooperation are generally studied separately rather than within an integrated framework”. It is strongly reflected that there is a need for multidisciplinary research combining business and legal studies in order to manage the use of collaborative agreement as an entirety.

*Second*, the previous alliance contract research has focused on how contractual characteristics explain alliance outcomes or what triggers changes to alliance contracts (Parkhe, 1993b; Deeds & Hill, 1998; Reuer & Ariño, 2002; Reuer et al., 2002), the determinants of alliance contractual design (Luo, 2002; Ryall & Sampson, 2006), particular contractual features and the design of alliance contracts (see e.g. Reuer & Ariño, 2007; Ariño & Reuer, 2004; Mayer, 2006), detailed analysis of the different contractual clauses (see e.g. Faems et al., 2008; Hagedoorn & Heslen, 2007; De Jong & Klein Woolthuis, 2009), whether relational governance substitutes for or complements formal governance mechanisms (see e.g. Poppo & Zenger, 2002; Mayer & Argyres, 2004; Hoetker & Mellewigt, 2009), and whether prior ties generate trust and/or inter-organizational routines for partners (Zollo et al., 2002). However, it is argued here that despite diverse research on alliance contracts, there has not been any study on how one specific international alliance is structured, based on and managed by an alliance

contract, which contractual provisions are included in such contract and how the design of such contract could be approached, and carried out by including the film industry as the case, international film co-production as the international alliance and co-production agreement as the alliance contract. As argued by Ariño and Reuer (2004), little attention has been paid to the alliance structuring aspects, such as the choice of the contractual provisions regulating the alliance relationship, and further supported by Reuer et al. (2006:307) as “little is known about the contents of alliance contracts”.

*Third*, the research on international co-productions in the film industry has been very modest and small in number, relating to very different perspectives on filmmaking and the film industry including e.g. studies on finance, policy and industrial dynamics, internationalization vs. globalization, asset specificity and long-term contracts, and organization as strategy (see e.g. Morawetz et al., 2007; Lorenzen, 2007; Chisholm, 1993; Robins, 1993; Hanssen, 2000; Kenney & Klein, 2000; Alvarez et al., 2005). Unfortunately, as pointed out by Morawetz et al. (2007), despite the increasing global prominence of international film co-productions, the literature has taken little account of the phenomenon to date and remains largely focused on national industries, and in particular on the US majors. This study sets out to redress this criticism by providing a multidisciplinary research on international co-productions from the Finnish film industry perspective.

### **1.3. Research Objectives, Questions and the Case Study Setting**

Based on the research problem and gap discussed above, the objective of this doctoral thesis is to contribute to the understanding of international alliances based on and regulated by alliance contracts that include various business and legal issues to be agreed upon between the alliance partners and are influenced by the international legal environment. Further, this doctoral thesis study is applied to the Finnish film industry as the case, international film co-production as the international alliance and co-production agreement as the alliance contract.

In order to achieve the proposed objective, this study aims at examining how co-production agreements consisting of various contractual elements function as a basis for international film co-production alliances from both business and legal perspectives; i.e. how an international film co-

production alliance is structured, based on and managed by a co-production agreement. Moreover, based on the multidisciplinary approach, this study aims at exploring the international legal environment by examining the relevant legal regulation and clarifying whether such regulation is compatible with the business environment. There is a complex network of different legal regulations relating to international film co-productions that have many parties involved: film production companies from different states, financiers, film institutes, television companies, etc., which leads to a situation where different laws, rules, and agreements create a rather complicated and confusing network that needs to be dealt with. More specifically, this study examines the legal regulation from the Finnish film industry perspective, since in order to carry out a complete and coherent study from the legal perspective, the legal regulation including national jurisdictions must be explicitly known (see also limitations presented in Chapter 1.4.).

Finally, as a managerial contribution, this study is carried out in order to increase the understanding of the Finnish film production company management on international film co-production alliances and the business and legal challenges involved in such international cooperation. Therefore, this study aims at presenting a model/framework relating to the business and legal management of international film co-productions and the use of co-production agreements.

Consequently, the research questions and sub-questions of the thesis are the following:

1. *How does a co-production agreement function as a basis for and regulating an international film co-production alliance?*
2. *What are the business and legal issues relating to, and having influence upon, the use of co-production agreements in international film co-productions from the Finnish film industry perspective?*
  - (a) *What are the key contractual elements of the international film co-productions?*
  - (b) *What is the legal regulation affecting the international film co-productions?*
  - (c) *How does the legal regulation support or restrict international film co-productions?*

3. *What kind of model/framework could be presented in order to increase understanding of the Finnish film industry with regard to both business and legal management of international film co-productions and the use of co-production agreements?*

Furthermore, in order to achieve the proposed objective, this study follows a case study method. As argued by Ghauri (2004), a case study is considered to be a useful method when the research area is relatively less known, and case studies have the potential to deepen our understanding of the research phenomenon. Moreover, this study is carried out as an exploratory single-case study in the business field, the Finnish film industry as the case. Here, the film industry and contracting in international film co-production alliances represent a unique and rather unexamined research area. The research design, the case study setting, and methodology are discussed in more detail in Chapter 3.

Relating to the research objectives, questions, and the overall study, it is further noteworthy to state a few relevant points in order to reflect the nature of this multidisciplinary study carried out by combining international business and legal studies. Above all, this study is international business research supported by the legal perspective. This means that, on the one hand, the structure, including introduction, literature review, methodology, empirical research, and contributions, as well as the content of the study represents international business research contributing to research on international alliances. On the other hand, the content and the scope of the legal perspective follow up the international business research structure by examining the legal knowledge and regulation to the extent that is adequate and justified in order to support the international business study and to increase the understanding of the management of international film co-productions as international alliances not only from the business perspective but also influenced by the legal environment. Defining this specification is relevant especially from the perspective of the science of law having influence on the interpretation of the research objectives and the research questions presented above, as well as the scope/comprehensiveness of the legal research and the expected results of the study.

## 1.4. Definitions and Limitations

### Definitions of the Key Concepts

This doctoral thesis employs a number of key concepts used in the study; the most important ones are presented below:

#### ***Collaborative agreement - co-production agreement***

For the purposes of this study, the term ‘collaborative agreement’ is used to refer to an actual agreement such as a ‘co-production agreement’ used in international film co-productions, entered into by and between the co-producing partners and specifying the agreed contractual provisions between the contracting/alliance partners to co-produce a film. A co-production agreement as collaborative agreement is further discussed and defined in more detail in Chapter 2.2.1.

#### ***Contractual provisions***

The term ‘contractual provisions’ refers to the terms and conditions agreed upon by and between the contracting parties and included in a contract such as a co-production agreement. This is further discussed in Chapter 2.2.2.

#### ***Co-producer – delegate producer – minority co-producing partner***

For the purposes of this study, the term ‘co-producer’ is used to refer to a production company as a co-producing partner of an international film co-production i.e. a contracting party of a co-production agreement. The term ‘delegate producer’ is used to refer to the ultimate responsible party for the financing and production of the film with regard to an international film co-production, and the term ‘minority co-producing partner’ is used to refer to the co-producing partner other than the delegate producer.

#### ***Film - feature film***

In general, the term ‘film’ refers to all kinds of films. However, this study focuses on international co-productions of ‘feature films’, and the term ‘film’ is used in this study to refer to such feature film. Other types of films are short film, documentary film, animation film, and commercial film. ‘Feature film’ is defined e.g. as a full-length, fictional film (not a documentary or short), generally for theatrical release (Litwak, 2004). Although the empirical study is based on feature films, the findings of the

study may also be applicable to international film co-productions for other types of film.

### ***International co-production – international film co-production***

In general, the term ‘international co-production’ refers to one type of operational form of international business as discussed in more detail in Chapter 2.1.2.1. However, in this study ‘international co-production’ refers to an often-used global model of international business cooperation in the film industry. ‘International co-production’ or ‘international film co-production’ may be defined as e.g. “a film with two or more producers from at least two different countries” (Kohvakka & Huttunen, 1997:54). For the purposes of this study, following the definition of Alberstat (2000), the term ‘international film co-production’ is used to refer to a production where two or more production companies representing different countries play an active role in the physical production of a film by supplying the services of individuals in the production, jointly contributing to the financing of it, and jointly – proportionate to their relative contributions – owning the rights of the completed production.

### ***Legal regulation***

In this study the term ‘legal regulation’ is used to refer to the different sources of law and legal rules, including e.g. international treaties (conventions, bilateral and multilateral treaties), national laws and other legal rules and regulations. This is further discussed in more detail in Chapter 2.3.

### ***Partner - party***

For the purposes of this study, the term ‘partner’ refers to a business partner i.e. alliance partner. On the other hand, the term ‘party’ is a legal term referring to a party to a contract. In other words, both terms may refer to the same entity, but the term ‘partner’ is used from the business perspective and the term ‘party’ from the legal perspective.

### **Relevant Limitations**

There are some specific noteworthy limitations to this doctoral thesis. From a process perspective of alliances, the study focuses on the contracting part of the alliance process and attention is not directed e.g. to the reasons, motives and/or rationales leading to international cooperation in the film industry and international film co-productions. Nor is attention paid to



language and other issues having positive or negative influence on the international cooperation. In this regard issues such as the significance of language, foreign interest on Finnish films, etc. are not studied. In other words, whatever the reasons for international cooperation are, this doctoral thesis focuses on studying international film co-productions based on co-production agreements. Nevertheless, this doctoral thesis does not focus on studying how the right partner is chosen, since the focus is on the use of co-production agreements between co-producing alliance partners. The positioning of this study is further presented in Chapter 2.1.3.

Geographically, this doctoral thesis focuses on the Finnish film industry. In order to ensure the integrity of the overall multidisciplinary study, this study is limited to the Finnish film industry, since national legal regulation is examined to meet the objectives set for the study, and this requires that the author of the study knows the national law. In order to carry out this research for any other country or territory, the researcher carrying out such study would need to be familiar with the national legal regulation of such country or territory. However, some parts of this study are rather universal based on the fact that international film co-productions involve the same elements regardless of the country in question.

In order to achieve the research objectives, all the relevant information on the subject, such as literature, articles and research studies, have been gathered, although due to the language restrictions of the author of this study, the information gathered is limited to the Finnish, English and Swedish languages.

## **1.5. Structure of the Study**

This doctoral thesis is divided into five chapters. In this *first* chapter, the study has been introduced. The *second* chapter presents the theoretical foundations of the study. It examines international film co-productions as international alliances, the use of co-production agreements in such alliances and the legal regulation having influence on international film co-productions by discussing the key features and by presenting a conceptual framework for the study. Accordingly, a multidisciplinary approach combining international business and legal studies is presented. The *third* chapter presents the methodology applied to the study by discussing the research design and the case study setting, the methods for collecting and analyzing the empirical data, and the legal research methodology.

In the *fourth* chapter, the conceptual framework established for this study is applied to the empirical study on international film co-productions and co-production agreements; the Finnish film industry being the case in question. Further, the empirical data collected for the study are discussed and analyzed, and key findings of the study are presented. The *final* chapter concludes the overall research by presenting the theoretical contributions and the managerial implications as well as suggestions for further research.

## **2. LITERATURE REVIEW AND LEGAL STRUCTURE**

This *second* chapter of the doctoral thesis creates a conceptual framework for this multidisciplinary study by going into the studies and literature relating to the research area on alliances, contracting, international film co-productions, and co-production agreements. In order to carry out a multidisciplinary study combining the research areas of international business and law, notice is not only taken of international business studies, but also of law and legal regulation, thereby creating a legal aspect to the research.

### **2.1. International Film Co-Productions as Alliances and Contracting**

In order to define the conceptual framework employed in this study, this sub-chapter begins the literature review. It examines international co-production of the film industry, identifies international film co-production as an alliance in the international business research area, and finally, positions this study within the notion of the contracting of alliances.

#### **2.1.1. International Co-Productions in the Film Industry**

‘International film co-production’ may be defined as “a film with two or more producers from at least two different countries” (Kohvakka & Huttunen, 1997:54). As argued by Kohvakka and Huttunen (1997), through international film co-production, production companies jointly invest financial stakes necessary to make a film and jointly own the film’s copyrights and share the revenues generated by the film. As defined by Alberstat (2000:209), a co-production can be defined as “a production where two or more producers play an active role in the physical production of a programme by supplying the services of individuals on the production, jointly contributing to the financing of it, and jointly, proportionate to their relative contributions, owning rights in the completed production”, and further in the case of international film co-production such producers represent different countries. According to Dally et al. (2002), an international film co-production is an agreement whereby two or more production companies of different nationality agree to share the ownership and rights to a film in exchange for contributing to its financing. In general, international film co-productions are often based on each party bringing

something valuable to the project that the other collaborators lack (Litwak, 2004).

The definition above offered by Kohvakka and Huttunen (1997) is relatively general. As stated by the authors, the definition does not include any criteria on the physical making of the film. It is not a requirement that an international film co-production is actually made internationally. An international film co-production may be made wholly domestically with the practical responsibility for the production resting on one firm, all the filmmakers employed coming from the country of the film's origin, the film being shot in the country in question, and in the national language. In such films, the other firms are only involved as producers in the sense defined above. However, a co-produced film can also be made internationally; as the image of an international film co-production easily creates in one's mind. Neither does the definition set any conditions for the sizes of the investments with which the firms participate in the financing of the film. They can just as well divide the financing into equal shares, as make one firm responsible for the bulk of the financing, with the other firms only financing small minority shares. Therefore, films that are not really international co-productions may be easily called such. For example, a film produced by a Finnish production company using film-makers from several countries and perhaps shot abroad, is thought to be an international film co-production, as is a film with foreign financing. (Kohvakka & Huttunen, 1997)

Stricter definitions are also being applied to international film co-productions. Such stricter definitions are used e.g. by support systems aiming to promote the making of international film co-productions, for example, in international agreements on co-productions. (Kohvakka & Huttunen, 1997) As stated by Neumann and Appelgren (2002), an international film co-production may be a financial arrangement whereby producers from different countries join forces to obtain the benefits of subsidies in their home countries, but it may also be a creative collaboration where each production company plays a producing/managing and creative role. Nevertheless, the fundamental reason for the use of different definitions is the great variety of international film co-productions that exist. For the purposes of this study, following the definition of Alberstat (2000), the term 'international film co-production' is used to refer to a production where two or more production companies representing different countries play an active role in the physical production of a film by supplying the services of individuals to the production, jointly contributing

to the financing of it, and jointly, proportionate to their relative contributions, owning rights in the completed production.

Moreover, as argued by Enrich (2005), a distinction must be drawn between co-production and ordinary financial participation, in which the ‘financial partner’ (also called the ‘financial co-producer’) participates in the results of exploiting the audiovisual work without being a co-owner of its constitutive elements. Enrich (2005) has further argued that not all producers who participate in a production are in fact co-producers; it is only those partners/persons who have specifically agreed to this by means of a contract. This argument is also applied to this study, and in this study the term ‘co-producer’ refers to the actual co-producing partner involved in an international film co-production and entering into a co-production agreement.

Film production, in general, is a long-term project implying different phases. In order to understand the process of producing any film, the different phases of the film production can be identified as follows (see e.g. Neumann & Appelgren, 2002; Baker, 1995; Dally et al., 2002; Alberstat, 2000):

**1. Development**

Writing a script, obtaining the rights to the story

**2. Pre-production**

Planning, financing, organizing, scheduling, budgeting, casting & contracting the film production

**3. Production**

Shooting the film, on location

**4. Post-production**

Cutting and editing the film, sound, etc. to finish the film, the first print

**5. Commercial exploitation**

Exploitation & distribution (theatre, TV, devices, streaming, festivals, etc.)  
Marketing (advertising, promoting, merchandising, etc.)

Becoming involved in a film co-production means working with a partner or various partners to produce a film over an extended period of time and often under great pressure; a point made by Neumann and Appelgren (2002). Therefore, when entering into a film co-production relationship with various partners, a production company must carefully consider the time frame, which makes an international film co-production even more

challenging to manage. All the different phases of film production must be coordinated and agreed between the co-producing partners representing different countries. In addition, international film co-production processes can vary. According to the Finnish producers, there has not been such a thing as a typical international film co-production, and similar thoughts have also been expressed in studies in other countries (Kohvakka & Huttunen, 1997). Multiformity is not merely a feature of international film co-productions; it is typical of film production in general. A variety of factors affect it, for example, the type of film, practical resources, the way the production companies work, and the operating environments. (Kohvakka & Huttunen, 1997)

In the following two sub-chapters, international film co-productions are first discussed and defined as alliances, and further, the study is positioned particularly within the notion of contracting of alliances.

### **2.1.2. International Film Co-Productions as Alliances**

#### *2.1.2.1. Inter-firm Cooperation and International Co-Production in IB*

There is a considerable body of literature concerning inter-firm cooperation. As argued by Marschan-Piekkari et al. (2001), the literature is replete with definitions of collaboration, cooperation, partnership, and strategic alliance, reflecting the scattered nature of the field and the different schools of thought and perspectives among academics working in the area. As Luostarinen and Welch (1997) have explained, many different terms have been used to describe international inter-firm cooperation; for example, ‘international cooperative operations’, ‘international cooperation forms or modes’, as well as ‘international collaborative agreements’, ‘international cooperative ventures’, ‘international strategic alliances’, and ‘international strategic partnerships’. According to Luostarinen and Welch (1997:193), “the purpose of the cooperation is to achieve commonly agreed, share goals through joint activities taking place in one or more collaborative or non-collaborative countries on an equity or non-equity basis by sharing costs, risks and profits caused by these joint trading or non-trading activities”. The authors have further argued that “partners may be rivals or non-competing firms which voluntarily, under a formal or informal agreement, decide to enter into a mutually beneficial partnership-type of cooperation for an extended period” (Luostarinen & Welch, 1997:193).

In general, in international business a lot of cooperation has been based on collaborative agreements, and international business operation modes have been identified by several researchers (see e.g. Taoka & Beeman, 1991; Luostarinen & Welch, 1997; Contractor & Lorange, 1988). As Buckley and Casson (1988) have stated, in international business, the term 'cooperative venture' may indicate a joint venture, a collaborative agreement, licensing, franchising, subcontracting or even a management contract or countertrade agreement. Perhaps the most common approach is to classify various types of collaboration along a continuum (see e.g. Marschan-Piekkari et al., 2001; Contractor & Lorange, 1988). At one end, there are tight equity agreements with considerable co-ownership, control and inter-organizational dependence, such as complete mergers and equity joint ventures. At the other end, there are spot transactions such as non-equity agreements, rather loose, even virtual arrangements of networking and information sharing. (Marschan-Piekkari et al., 2001; Buckley & Casson, 1988; Kogut, 1988) Between the two extremes lie several types of cooperative arrangements, international film co-production representing one of these. As Contractor and Lorange (1988:22) have pointed out, "these arrangements differ in the formula used to compensate each partner (the legal form of the agreement) as well as in the strategic impact on the global operations of each partner".

Traditionally, cooperative arrangements have further been grouped into different types. As an example, Contractor and Lorange (1988) have explained the difference between the types of cooperative arrangements based on two factors – compensation method, and inter-organizational dependence. In co-production and non-equity cooperative agreements involved in it, the extent of inter-organizational dependence is rather high compared to other types of cooperative arrangements; however, being lower in the case of equity joint ventures. Further, on the basis of the cooperation field, Luostarinen and Welch (1997) have divided international cooperative operations into four groups: research and development cooperation; commercial cooperation; industrial (manufacturing, production) cooperation; and managerial cooperation. Here co-production represents industrial cooperation. According to these studies, the term 'international co-production' strongly refers to a form of international cooperation. However, the term 'international co-production' does not really reflect the real purpose of the international co-production of the film industry. In the film industry, the term 'international co-production' has been generally used to refer to the fact that a film is jointly produced by two or more partners representing different countries, despite the real content of

international cooperation between the operating partners. In other words, the term ‘international co-production’ used in the film industry does not clearly relate to traditional industrial co-production, but the verb ‘produce’ is used to refer to the producing of a film.

When designing governance for an alliance, Doz and Hamel (1998) have discussed the choice between contractual and institutional forms of governance, i.e. whether the alliance should be defined through a set of contracts or as a separate institution, such as a joint venture. When determining the best form of alliance governance, the authors remind that economists and legal specialists would argue that the choice hinges largely on whether a “complete” contract can be drawn up, i.e. whether a legal agreement among the partners can account for specific future events and contingencies (Doz & Hamel, 1998). Doz and Hamel (1998) have further pointed out three kinds of contingencies making the crafting of alliance contracts difficult and ineffective: task integration, economic uncertainty, and the need to make decisions quickly. *First*, task integration implies process integration, not just output coordination, so it requires working together on common tasks. *Second*, the more uncertain the nature and value of future trade between partners, the more difficult it is to govern through ex-ante contracts. Although an institutional form will not guarantee that an alliance can handle long-term uncertainty, when change occurs, an institutional arrangement may be easier to revise than one based on contracts. *Third*, the final factor affecting the choice between forms of collaboration is urgency of decision-making. (Doz & Hamel, 1998) According to Doz and Hamel (1998), in cases where there is no time for a lengthy approval process, the fact that the key joint venture managers enjoy autonomy in decision-making and also hold key positions in their parent companies makes quick decision-making possible. In other words, alliances that require little task integration, face little uncertainty, and have no need for quick decision-making, can rely on simple contractual arrangements for their governance. (Doz & Hamel, 1998)

Based on the literature on inter-firm cooperation and the characteristics of international film co-productions, international film co-productions are considered as international alliances between partners cooperating internationally in producing, exploiting, distributing, and/or in any other way operating regarding a specific film. In the following sub-chapter, international film co-productions are defined more precisely as international alliances.



#### *2.1.2.2. Alliances and Various Research Perspectives*

In the never-ending search for ways of gaining a sustainable competitive advantage, firms have increasingly turned to the use of strategic alliances as a method of international expansion (see e.g. Koza & Lewin, 1998; Brouthers et al., 1995; Mohr & Spekman, 1994; Lewis, 1990). As previously stated, one of the terms describing international inter-firm cooperation is 'international strategic alliances' (Luostarinen & Welch, 1997). Alliances as such have been defined in various ways. According to Harrigan (2002:205), a strategic alliance is "a partnership among firms that work together to attain some strategic objective". Gulati (1998:293) has defined strategic alliances as "voluntary arrangements between firms involving exchange, sharing or co-development of products, technologies, or service". Inkpen (1998:224) has defined a strategic alliance as "a relatively enduring interfirm cooperative arrangement that utilizes resources and/or governance structures from autonomous organizations". Furthermore, according to Ernst (2003:20), an alliance is "a relationship between separate companies that involves joint contributions and shared ownership and control", and the author further argues that "seen on a continuum, an alliance is an organizational form between a full acquisition and a loose relationship based on an informal agreement". On the other hand, Seristö and Vaara (1999) consider alliances as organizational hybrids that have different meanings for different actors.

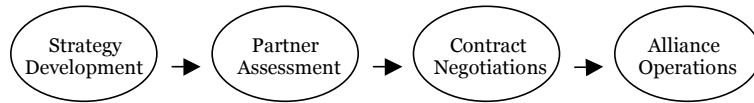
The specific term 'strategic alliance', separated from the term 'alliance', has been defined on the basis of certain characteristics. For example, Harbison and Pekar (1998) have defined 'strategic alliances' in terms of the following distinct characteristics: (1) a commitment of at least ten years; (2) a linkage based on equity or on shared capabilities; (3) a reciprocal relationship with a shared strategy in common; (4) an increase in the companies' value in the marketplace, placing pressure on competitors; and (5) a willingness to share and leverage core capabilities.

According to Neumann and Appelgren (2002:4), a film co-production can be described as "any type of production which involves more than one party in the production process, through partnership, joint venture or any other means of cooperation". The authors further state that the structure of an international film co-production is known in many countries as a partnership (Neumann & Appelgren, 2002). For the purposes of this study, according to the definition of Harrigan (2002), the term 'alliance' is used to refer to a partnership among firms that work together to attain some

strategic objective. International film co-productions are these kinds of alliances. As international film co-productions are long-term projects, they may take several different forms attaining different strategic objectives, and there are a variety of capabilities to be shared and agreed upon, international film co-productions can strongly be considered as alliances. Referring to the definition of Harbison and Pekar (1998), based on the fact that international film co-productions may create a commitment of less than ten years, they may be considered to be 'alliances' rather than 'strategic alliances', which supports the position taken in this study that international film co-productions are considered as 'alliances'.

For some years now there has been a growing stream of research of alliances that have been studied from various perspectives (see e.g. Osborn & Hagedoorn, 1997; Pekar & Allio, 1994; Lorange & Roos, 1992). For example, Osborn and Hagedoorn (1997) have distinguished economics-based views of alliances, the corporate strategy perspective and the inter-organizational field perspective. The research on alliances has been carried out from various perspectives including, for example, the following themes: (1) motives, reasons and rationales for alliances (see e.g. Contractor & Lorange, 1988; Ohmae, 1989; Eisenhardt & Schoonhoven, 1996; Lorange & Roos, 1991; Schermerhorn, 2001); (2) alliance formation, partner selection and characteristics (see e.g. Brouthers et al., 1995; Saxton, 1997; Lorange et al., 1992; Luo, 1997; Mitchell et al., 2002; Marschan-Piekkari et al., 2001; Hamel et al., 1989; Borys & Jemison, 1989); (3) contractual arrangements and trust (see e.g. Reuer & Ariño, 2007; Ariño & Reuer, 2004; Ariño et al., 2001; Poppo & Zenger, 2002; Das & Teng, 1998; Contractor & Kundu, 1998; Gulati, 1995); (4) alliance performance, structures and complexity of alliances (see e.g. Glaister & Buckley, 1999; Osborn & Baughn, 1990; Parkhe, 1993a, 1993b; Killing, 1988); (5) developmental and evolutionary processes (see e.g. Ring & Van de Ven, 1994; Doz, 1996); (6) alliances and networks (see e.g. Gulati, 1998; Osborn & Hagedoorn, 1997); and (7) learning in alliances (see e.g. Hamel, 1991; Inkpen, 1998; Khanna et al., 1998).

In order to understand an alliance from the process perspective, as presented by Pekar and Allio (1994), four stages of the strategic alliance process may be identified: strategy development, partner assessment, contract negotiations and alliance operations. This perspective is presented in Figure 1.



**Figure 1.** Four stages of the strategic alliance process (Pekar & Allio, 1994).

These four process stages can be related to different research perspectives. *First*, strategy development studies the alliance's feasibility and rationale including e.g. motives, drivers and objectives. As stated by Pekar and Allio (1994), it focuses on the major issues and challenges and development of resource strategies for production, technology, and people, and it also requires aligning alliance objectives with the overall corporate strategy. *Second*, partner assessment emphasizes building a database of possible partners, analyzing a potential partner's strengths and weaknesses, and preparing appropriate partner selection criteria (Pekar & Allio, 1994). *Third*, contract negotiations determine the content of the cooperation – whether all alliance parties have realistic objectives. Also, each partner's contributions are defined and all other terms of the alliance are negotiated and determined. This process stage especially relates to studies on contractual arrangements and trust. *Fourth*, according to Pekar and Allio (1994), alliance operations address senior management's commitment, the caliber of resources devoted to the alliance, linking of budgets and resources with strategic priorities, and measuring and rewarding alliance performance. This fourth process stage includes a variety of perspectives, such as alliance performance and complexity of alliances, developmental and evolutionary processes, as well as networks and learning in alliances. (Pekar & Allio, 1994)

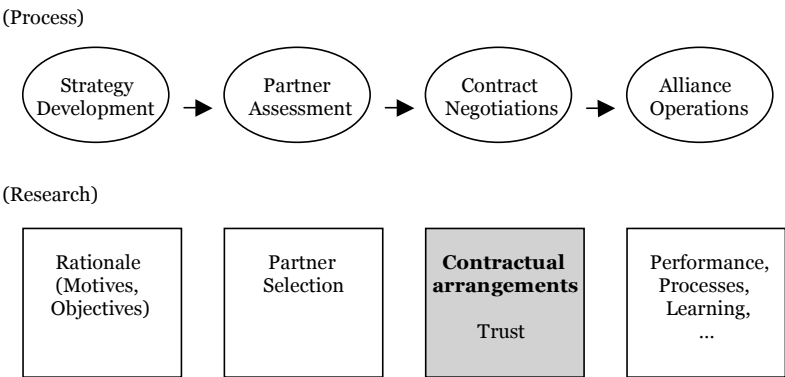
The following sub-chapter positions this particular study on international film co-production alliances within the sphere of contracting of alliances.

### **2.1.3. Contracting in International Film Co-Production Alliances**

International film co-productions are mainly coordinated and regulated by collaborative agreements, called 'co-production agreements'. Such co-production agreements are entered into between the co-producing partners specifying the contractual provisions agreed by and between production companies as contracting/alliance partners to co-produce a film (see e.g. Neumann & Appelgren, 2002; Baker, 1995; Dally et al., 2002; Alberstat, 2000). Therefore, these international film co-production alliances

represent a contractual form of governance, since they are based on co-production agreements.

In this study, the interest is to examine the use of co-production agreements that production companies as alliance partners enter into when forming an international film co-production alliance. The following figure, Figure 2, presents different research areas relating to the stages of an alliance process, and the research area relating to this study on international film co-productions is further marked as bold.



**Figure 2.** Modified model of the four stages of the strategic alliance process by Pekar and Allio (1994).

Business contracting is one interesting area of research on alliances. Many firms invest a lot of money in business development activities in their efforts to land a particular contract. However, as Punnett and Ricks (1992) have pointed out, prior to incurring these costs, the firm should understand the contracting organization and the project in question. Each business manager should pay attention to important issues. *First*, it is important to estimate the likelihood that the contract is actually open to all firms and has not been promised to one firm based on its relationship with the contracting organization. *Second*, it is also relevant to determine the contracting organization's objectives and whether the firm is able to meet these objectives in an efficient and effective manner. *Third*, attention should be paid to the contracting organization's ability to live up to its part of the contract, in terms of provision of services, materials, and prompt payments. If an assessment of the contract organization is positive, then the time and money necessary to bid for the contract can be compared to the expected returns. *Finally*, consideration needs to be given to obtaining

work permits, income tax responsibilities and other issues related to the specific business in question. (Punnett & Ricks, 1992)

Contracting firms rely on their communicating and negotiating ability throughout the process of bidding for, signing, and completing a contract. Many firms are very successful international contractors, but many more find that the costs often outweigh the benefits. (Punnett & Ricks, 1992) As Punnett and Ricks (1992) have reminded, contracting provides unique opportunities for firms that have specialized skills that are in demand internationally, but firms should not make the mistake of thinking that it is easy to obtain international contracts.

## **2.2. Co-Production Agreements as a Basis for International Film Co-Productions**

Since international film co-production alliances are based on co-production agreements, the contracting of an international film co-production alliance refers to the contracting of such co-production agreements. In order to finalize the literature review part of this doctoral thesis, this sub-chapter examines in more detail co-production agreements used in international film co-production alliances, the design of such agreements, and the contractual provisions characteristic to them.

### **2.2.1. Co-Production Agreement of the Film Industry**

#### *2.2.1.1. Co-Production Agreement as Collaborative Agreement*

From the *business* perspective, the term ‘collaborative agreement’ may refer to different meanings. As already stated, the term ‘international collaborative agreement’ is used as one of the terms describing international inter-firm cooperation. Hergert and Morris (1988:100) consider a collaborative agreement as “an intermediate position along a spectrum of inter-firm dealings encompassing arms-length transactions at one end and full mergers at the other”. The authors argue that the main purpose of a collaborative agreement is to share risks and rewards among the participants (Hergert & Morris, 1988).

The term ‘international collaborative agreement’ is also used to refer to an actual agreement/contract specifying contractual provisions agreed upon between the collaborating partners. For the purposes of this study, the term ‘collaborative agreement’ is used to refer to such actual co-production

agreement entered into by and between the co-producing partners and specifying the contractual provisions agreed upon between such contracting/alliance partners to co-produce a film. Moreover, as argued by Enrich (2005), the legal nature of co-production may vary considerably, depending on the various forms that may be agreed by contract (a non-registered company, a corporation, a partnership, a contract of share in the accounts). Nevertheless, for the purposes of this study, the term 'co-production agreement' is used to refer to an agreement specifying the contractual provisions for international film co-production between co-producing partners as independent contractors without a commitment to creating any association, corporation, or joint venture.

It is noteworthy that there are also other international collaborative agreements relating to international film co-productions, for example, particularly relating to financing, exploitation, distribution, marketing, and sales of a film. As particularly reminded by Alberstat (2000), film producers must differentiate a co-production agreement from a co-financing agreement that is an agreement where a participant's involvement is purely financial. As previously referred to, Enrich (2005) has pointed out the difference between co-production and ordinary financial participation. However, this study only focuses on a co-production agreement regulating an international film co-production alliance, and such co-production agreement refers to the agreement between the actual co-producing partners. Consequently, since international film co-productions are considered as international alliances, these co-production agreements as a basis for such alliances are also considered as alliance contracts.

Finally, apart from joint ventures, an alliance can be created under many contractual forms (García-Canal, 1996). According to the distinction of two types of contractual agreements outlined by García-Canal (1996), a co-production agreement represents a horizontal agreement rather than a vertical agreement. In horizontal agreements, all partners participate directly in the performance of the activities, subject to the agreement all of them share part of their assets, and the greater the horizontal character of the alliance the higher the degree to which the partners share the property rights over the assets involved in the activities (García-Canal, 1996). As stated by García-Canal (1996), in contractual agreements the relationship between partners is governed by a contract, specifying the rights and obligations of the parties, not implying the establishment of a new entity. The author continues that in this way, all the details relating to the control of the activities and the distribution of their residual returns must be

negotiated between the partners, whereas all details not explicitly treated remain unspecified (García-Canal, 1996).

#### *2.2.1.2. Co-Production Agreement as Business Contract*

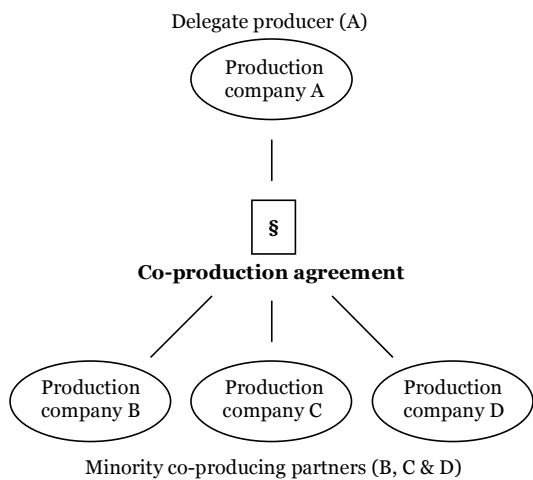
From the *legal* perspective, a co-production agreement regulating international film co-production is considered to be an international ‘business contract’; this is different from multilateral and bilateral agreements. Business contracts are made between business partners i.e. firms representing different countries (instead of between countries), and as defined by Lyons and Mehta (1997:241), contracts are “agreements in writing between two or more parties, which are perceived as legally binding”. Lyons and Mehta (1997) have further argued that whereas an agreement may take a variety of forms – written or verbal, implicit or explicit forms – a formal contract refers to such an agreement in tightly written legal forms, which definition is also applied to this study.

Accordingly, a co-production agreement as used in international film co-productions represents such a business contract between firms. However, the relationship between different laws and business contracts is very close. It is important to distinguish between different kinds of business transactions since different laws and legal principles apply to each. As Keenan and Riches (1995) have stated, the rights and duties of the contracting parties are determined by the nature of their contract and the legal rules that govern that particular kind of agreement. Györy (1995:2) has defined the contract of co-production as the contract through which “several production enterprises agree to jointly produce a film or audiovisual work, with each party contributing a substantial share of the means needed for the production and with the intention of becoming the owners”.

As previously related, every film is unique and every co-production agreement is a singular creation. However, one important factor to be considered regarding a co-production agreement is which party will be contracting with whom (Alberstat, 2000). All the co-producing partners may be involved in the same agreement. The ‘delegate producer’, as the ultimate responsible party for the financing and production of the film, may contract individually with each of the other parties involved in the film co-production or all the parties may be included in the same co-production agreement. Neither way can be considered better than the other, but as the expectations of each party with regard to the key matters of a co-production

agreement may vary greatly, it may be more appropriate for the delegate producer to agree upon the co-production separately with each of the other parties. Therefore, international film co-production alliances may involve one or several co-production agreements. Film producers should realize that all deals are negotiable and because of the variable nature of film production, there are no specific rules to apply to the final outcome of negotiations (Alberstat, 2000), although naturally they are limited by the applicable legal regulation.

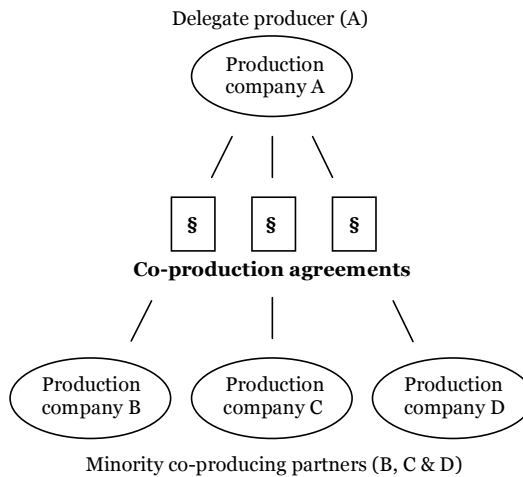
The following figures illustrate the two alternatives regarding the use of a co-production agreement in international film co-production: (a) the case of one co-production agreement between the co-producing partners and (b) the case of several co-production agreements involved in one international film co-production. In Figure 3a, production company A as the delegate producer enters into one co-production agreement with all the other co-producing partners (production companies B, C and D), i.e. all the co-producing partners are included in the one and only co-production agreement.



**Figure 3a.** International film co-production including one co-production agreement.

In Figure 3b, production company A, as the delegate producer, enters into one co-production agreement with each of the other co-producing partners, i.e. the delegate producer has a separate co-production agreement with each minority co-producing partner.





**Figure 3b.** International film co-production including several co-production agreements.

After discussing the co-production agreement used in international film co-productions, the following sub-chapter further examines the design and key content of such co-production agreements, by reference, also, to the significance of commitment and trust.

## 2.2.2. Design of a Co-Production Agreement

### 2.2.2.1. Design of Alliance Contracts and Contractual Provisions

Regarding alliance contracts in general, as stated by Lee (2000), the only good agreement is one that is fair to all parties, and everyone is best served when the deal is balanced to the contributions of all participants. As pointed out by Ghauri and Usunier (2003), a simple memorandum of understanding that allows further refinement may be better when the parties have not reached full agreement within a negotiation round. The authors further warn that the idea that “a deal closed is better than none” may be dangerous, since signing an ambiguous contract can lead to enormous problems in the implementation stage (Ghauri & Usunier, 2003).

As pointed out by Reuer and Ariño (2007), empirical research on the economics of contracts has especially tended to examine contracts from two approaches: (1) by investigating contractual complexity in very global terms and (2) by investigating individual provisions. Only recently, research on contracts has been extended, *first*, by Poppo and Zenger (2002) who have

called for research that examines particular provisions in contracts rather than relying on such global indicators of contractual complexity, and *second*, by Reuer and Ariño (2007) who have combined in their research some of the best elements of both of the approaches mentioned above by investigating how various types of contractual provisions bundle together, and by assessing whether contractual complexity is a multidimensional or unidimensional construct.

Regarding the literature on alliances and contracts, as illustrated by Reuer and Ariño (2007), the following work may be identified: *First*, there has been research on how contractual characteristics explain alliance outcomes or what triggers changes to alliance contracts (Parkhe, 1993b; Deeds & Hill, 1998; Reuer & Ariño, 2002; Reuer et al., 2002). *Second*, researchers have focused on the determinants of alliance contractual design (Luo, 2002; Ryall & Sampson, 2006). *Third*, studies have examined whether relational governance substitutes or complements formal governance mechanisms (see e.g. Poppo & Zenger, 2002; Mayer & Argyres, 2004; Hoetker & Mellewigt, 2009, Li et al., 2010), and *fourth*, research has been carried out by considering whether prior ties generate trust and/or inter-organizational routines for partners (Zollo et al., 2002). (Reuer & Ariño, 2007) Recently, Reuer and Ariño (2007) have contributed to the literature by examining the theoretical determinants of contractual complexity leading to the core finding that contractual complexity is a multidimensional construct and that different dimensions of contractual complexity have unique antecedents. Faems et al. (2008) have also recently contributed to the literature by developing a more integrative perspective on alliance governance by connecting contract design, trust dynamics, and contract application.

Studies on negotiations, and more specifically cross-cultural/cross-national negotiations, naturally also closely relate to international business contracts. Both contractual negotiations and renegotiations (see e.g. Ghauri & Usunier, 2003; Jensen & Unt, 2002; Mead, 1998, 1990; Campbell & Reuer, 2001; Ariño & Reuer, 2004; Reuer & Ariño, 2002) have been studied, since negotiation can be considered as one of the important arenas of cross-cultural communication for international business. As pointed out by Mendenhall et al. (1995), business hardly occurs unless negotiations are successful. Negotiations may be considered to represent a so-called pre-stage of business contracts requiring careful preparation, especially when the contracting parties are not representing the same country and culture. As argued by Mead (1998), the more long-term the proposed deal, the

greater the need for additional data, including e.g. financial and economic data, infrastructure data, labor force data, legal data, political data, and cultural data. Moreover, different issues have been identified as playing an important role in cross-national negotiations. Research on cross-cultural negotiations may be carried out by looking at different issues that may vary among cultural groups, e.g. by focusing on negotiation as a process, the choices of representation in negotiations, decision-making authorities and reasons for negotiating. However, this study focuses on the co-production agreement as an alliance contract regulating an international film co-production alliance in order to understand such co-production agreement from both business and legal perspective, rather than studying contracting, including negotiation, as a process.

Looking more closely at the research on alliance contracts, although studies have been carried out dealing with contracting and alliance contracts as illustrated above, it seems that only recently has more focus been directed to particular contractual features and the design of alliance contracts (see e.g. Reuer & Ariño, 2007; Ariño & Reuer, 2004; Mayer, 2006). As argued by Ariño and Reuer (2004:37), “contract design is an essential part of alliance structuring” and “a well-designed alliance contract will be consistent with the alliance’s purpose and with the partners’ interests”. Further, De Jong and Klein Woolthuis (2009:44) have argued that “the design of a formal agreement is one of the most important strategic decisions for alliance partners”. This also supports the importance of co-production agreements used in international film co-production alliances creating the entire basis for such international cooperation. The design of alliance contract refers in this study to the examining of co-production agreements and the content characteristic to such agreements regulating the international film co-production alliances.

According to Reuer and Ariño (2007:315), “the actual contents of alliance contracts may serve several important functions in managing exchange hazards”. Through their research, these authors have investigated particular contractual provisions that firms incorporate into their alliance contracts, and have identified the conditions under which it pays for firms to use more complex contracts and the conditions under which it pays for them to renegotiate their contracts (Ariño & Reuer, 2004). Ariño and Reuer (2004:37) remind that “even if the partners have a clear understanding of the alliance’s intent and their mutual interests, designing a contract that anticipates all possible eventualities is not feasible, no matter how complex the contract may be”. As further exemplified by the authors, parties to an

alliance may use the contract to set out their mutual rights and obligations through the specification of inputs to the alliance, processes by which exchanges will occur and any disputes will be resolved, and the expected outputs from the joint undertaking (Ariño & Reuer, 2004). Moreover, Faems et al. (2008) have argued that existing research has exclusively focused on the degree of contractual formalization, or the number of clauses that are defined in a contract. Faems et al. (2008) have further stated that such an approach ignores the nature of formalization, or the actual content of the contractual clauses (see also Klein Woolthuis et al., 2005), which aspect, however, is showed to be important, particularly by Hagedoorn and Hesen (2007) whose research has focused on an in-depth and detailed, qualitative analysis of the interaction of contract law and different modes of technology partnering. Technology alliances have also very recently been studied by De Jong and Klein Woolthuis (2009) who have focused on the content and role of formal contracts in high-tech alliances.

In order to be more specific on the actual content of each alliance contract from the legal perspective, contractual provisions of each business contract are essentially a matter of express agreement between the contracting parties and which provisions are included in each contract is critical. The aim is to build common ground, and in general, the better the so-called rules of business are included in the agreement, the less probable a dispute will be. As defined by Keenan and Riches (1995), the obligations undertaken by the parties are known as the terms of the contract. This is generally unproblematic when the details of the agreement are enshrined in a written contract, but even then problems may arise. As Keenan and Riches (1995) have stated, the contracting parties may have failed to express their intentions clearly or unambiguously; they may have omitted to mention a particular matter that later assumes great importance, and the written document may contradict what was said during the course of oral negotiations. In this study, the term 'contractual provisions' is used to refer to the content, i.e. the business terms and conditions, of an alliance contract such as a co-production agreement.

As presented above, previous studies on alliance contracts have strongly supported the view that contract design is a key part of alliance structuring. However, different from the previous studies, this study does not aim to examine the design of alliance contracts in general, since the specific focus is directed to the international film co-production alliances and the co-production agreements as alliance contracts regulating such international

alliances. Since it depends much on the agreement in question, what should be included therein, only by looking more closely at each business transaction, more specific information may be given. In contrast to the previous studies, this study examines how one specific international alliance is structured based on and managed by an alliance contract, which contractual provisions are included in such contract, and how the design of such contract could be approached. In order to understand how international film co-production alliances are based upon and managed by co-production agreements, this study is carried out by examining the use of and key content of such co-production agreements.

Accordingly, the following sub-chapter examines the key contractual provisions characteristic to co-production agreements in order to explore an understanding of the alliance contract design of such co-production agreements. This objective is further completed through the empirical research part of this doctoral thesis.

#### *2.2.2.2. Key Contractual Provisions of Co-Production Agreements*

Alliance contracts vary greatly in their complexity (Reuer et al., 2006). Regarding co-production agreements of the film industry, interviews have revealed that the more countries with firms participating in the process of producing a film there are, the more complicated it is (Kohvakka & Huttunen, 1997). As Kohvakka and Huttunen (1997) have pointed out, the development stage becomes more laborious with each additional country. The authors have further argued that negotiations must then be conducted with more parties and more legal aspects have to be taken into consideration in making the agreement (Kohvakka & Huttunen, 1997). Alberstat (2000) has also reminded that production companies must realize that finalizing contracts for film co-productions can be a lengthy process, particularly when more than two parties are involved. For this reason, it is strongly advised that contracts are finalized before production starts. Moreover, various contractual matters can create a deadlock through irreconcilable differences between the parties to an agreement (Alberstat, 2000). Furthermore, Litwak (2004) has argued that when contemplating an international film co-production, it is important to consider the expectations of the co-producing partners.

With regard to the main content of a co-production agreement, according to Enrich (2005:2), “two or more persons agree to: a) collaborate and pool goods, rights or services in order to produce an audiovisual work of some

kind, b) attribute ownership of the rights in respect of the audiovisual work resulting from such collaboration, and c) make use of the work jointly, and share the ensuing profits (or losses) in agreed proportions”. Many kinds of check lists have been created in order to advise co-producing partners to manage and understand the issues that need to be taken into consideration when entering into co-production agreements, since such agreements include a variety of different contractual provisions that are required to be agreed upon. Based on the literature (see e.g. Neumann & Appelgren, 2002; Baker, 1995; Dally et al., 2002; Alberstat, 2000), some key contractual provisions of a co-production agreement may be identified. These are presented in Table 1.

<ul style="list-style-type: none"> <li>➤ Film/production specifications</li> <li>➤ Contributions of the co-producing partners</li> <li>➤ Production schedule</li> <li>➤ Budget</li> <li>➤ Financing plan &amp; cash flow</li> <li>➤ Rights clearance (script, music, etc.)</li> <li>➤ Copyright of the film &amp; secondary rights</li> <li>➤ Commercial exploitation &amp; distribution of the film</li> <li>➤ Materials &amp; the delivery</li> <li>➤ Profit participation/sharing, recoupment &amp; collection of revenues</li> <li>➤ Insurances</li> <li>➤ Credits (on screen)</li> <li>➤ Confidentiality</li> <li>➤ Termination</li> <li>➤ Assignment of the agreement</li> <li>➤ Applicable law &amp; dispute resolution</li> </ul>
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**Table 1.** Key contractual provisions of a co-production agreement.

Next, each key contractual provision of a co-production agreement is separately discussed as a means to introduce each subject area. Clearly, each subject area is much more extensive and detailed than presented below, but this study focuses on identifying the key content and key contractual provisions of co-production agreements to the extent appropriate in order to carry out this research, i.e. it does not study the details and in-depth analysis of any particular provision.

### Film/Production Specifications

The film/production specifications listed in a co-production agreement, such as the title, format, length, language, the screenplay, principal contributors, and location(s) of the film shooting, are crucial as they indicate the technical parameters of the production (Neumann & Appelgren, 2002). Specifying the key elements of a film co-production

enables co-producing partners to ensure that all known elements of the film co-production are thoroughly explored between the partners before commencement of production (Alberstat, 2000).

### Contributions of the Co-Producing Partners

When contemplating an international film co-production, co-producing partners need to consider the nature of their relationship. The co-producing partners need to decide what each company contributes to the endeavor. (Litwak, 2004) The contributions define the nature of participation of each co-producing partner. These contributions may be financial and any other type of cooperation. As argued by Enrich (2005), film co-production will only be possible if each co-producing partner does indeed contribute what it has undertaken to contribute, and the author further specifies contributions to be (a) monetary, (b) non-monetary, consisting of goods or rights, and (c) production or commercialization services. For example, as pointed out by Litwak (2004), the need for a location abroad may lead to international film co-production in which case the company in the specific country may provide local services and expertise. International film co-production may also represent stronger relationship between the co-producing partners, when such partners may be operating as partners sharing creative control and financial risk (Litwak, 2004). If co-producing partners make unequal contributions, their control, fees, and ownership of the film project can be adjusted to reflect this so the deal is fair to all co-producing partners (Litwak, 2004).

As stated above, in a film co-production, one company is usually appointed as the ultimate responsible party for the financing and production of a film. That company or individual is named the delegate producer. The delegate producer will then oversee all creative, administrative, financial, legal and editorial decisions. Specifically, the creative process should rest with only one co-producing partner in order to avoid conflicts. It should then be agreed, defined, and specified how much “power” the other co-producing partners are prepared to give to the delegate producer. There should be certain limits specifying that the delegate producer cannot make any decision that increase production costs. For example, a production cost increase is accepted if the delegate producer can provide the additional finance. It cannot be stressed enough how vital it is that each co-producing partner’s responsibilities and obligations are clearly allocated and confirmed in a co-production agreement. Every co-producing partner will bring individual considerations to the table when the

agreement is discussed and negotiated. (Neumann & Appelgren, 2002) Alberstat (2000) has also argued that the detailed responsibilities of each co-producing partner must be clearly set out within the agreement, including their respective roles, responsibilities, and entitlements.

### Production Schedule

It is essential that co-producing partners agree on a shooting schedule for a film (Alberstat, 2000). The production schedule serves to outline the work that is necessary to make the film. The production schedule includes information on principal photography and more detailed information on shooting days. Without the production schedule as an integrated part of the documents, the delegate producer is essentially given free reign in the planning and production of the film. Besides the obvious budget implication, this may well have artistic and content consequences. (Neumann & Appelgren, 2002) Moreover, a production schedule often is a requirement of the financiers (Alberstat, 2000).

### Budget

The production budget is much more than an estimated calculation of a film's costs. It is a vital document containing many of the decisions made by co-producing partners concerning principles and parameters of the film's co-production. It contains stipulations of the cast and its size, functions of the crew, the duration of shooting, the length of the work day and week, the number of locations, special effects, music, and so on. Therefore, a fully specified budget and budget summary should be available at all times and referred to as an integrated part of any co-production deal. The budget should be individually accepted and approved in writing by all co-producing partners and attached to the co-production agreement. If co-producers do not work from the same budget, there may be severe consequences. When shooting in different countries there are of course various factors to be considered in respect to the budget. Traditions vary across countries and if these "differences" are not considered, the budget consequences and implications can be fatal. Moreover, different subsidy rules as to what types of costs are acceptable in the budget also apply in each country. (Neumann & Appelgren, 2002)

It must be further considered, negotiated, and decided who is entitled to budget savings, if any, and who is responsible for any overcosts (Neumann & Appelgren, 2002). In this regard, since the budget may change and lead



to an overspend (any increases in the budget) or underspend (less costs than budgeted), such detail should also be noted and agreed upon in the co-production agreement (Alberstat, 2000).

### Financing Plan and Cash Flow

Raising funds and making a film is a challenging and complicated undertaking. Types of financing generally fall into four main categories: payment against sale of rights, subsidies and/or soft money, equity, and sponsorship. Payment against sale of rights (pre-sales and minimum guarantees) as financing is characterized as money pre-paid or pre-agreed for a contract on certain exploitation rights. In the case of television pre-sales it refers to payment for broadcast rights, or licenses. The minimum guarantee (MG) refers to a minimum advance by a distributor or sales agent of the producer's share of expected income from distribution of the film in a given territory. Subsidies and/or "soft money" are provided by state funding bodies for producers to complete a budget that otherwise could not be completed on commercial terms, and they aim to nurture the local industry. This financing varies from direct support to various loan arrangements, typically interest-free and with restricted repayment conditions. There are public funding provided by such film institutes as the Finnish Film Foundation. There are also regional and local authorities. Supranational institutes represent soft money, such as the MEDIA Programme, Eurimages, and Nordisk Film & TV Fond.

Regarding equity, a person or company investing equity in a film becomes co-owner of the final product and will typically stay on board as owner in perpetuity. An equity investor puts up finance with the expectation of receiving a return on investment. These are provided by producers and/or studios. Sponsorship and 'product placement' refer to the contribution by a company of either goods or money to the film, in exchange for an association with or appearance in the film. The expectation is that such placement or sponsorship will generate promotional benefits for the company. Finally, tax funds may represent MG/pre-sales, soft money, or equity. Some countries have tax legislation designed specifically to encourage the private sector to invest in films. Tax advantages may be provided if certain local conditions are met. (Neumann & Appelgren, 2002)

A financing plan provides the structure for financing of a film. The amount of finance provided or procured by each co-producing partner should be stated as a percentage of the budget, and this should be reflected

in the financing plan (Alberstat, 2000). Co-producing partners should be aware that when entering into a film co-production each partner to the co-production will be responsible for specific amount of the overall budget (Alberstat, 2000). Neumann and Appelgren (2002) have suggested that it is extremely useful to have the financing plan in mind throughout contract writing, because it can indicate or even dictate certain structures and agreements that need to be made. Any revisions of the plan will have repercussions on each element therein and could also have knock-on effects regarding compliance with national rules or guidelines (Neumann & Appelgren, 2002). Neumann and Appelgren (2002) have further pointed out the securing of the finance. One of the most common problems that seriously threaten the start or completion of a film is non-performance of a co-producing partner and/or financier. Until the entire finance has been secured, Neumann and Appelgren (2002) have recommended working always with back-up plans and staying aware of what would happen if co-production need to be postponed or even canceled.

Once the co-producing partners have been able to raise all of the funding for a film co-production, the next step is to prepare a detailed cash flow chart, which will outline both the cash coming in and expenses paid out during the co-production (Neumann & Appelgren, 2002). The cash flow may specify the timing for remittance of funds to the co-production by the various co-producing partners or their respective financiers (Alberstat, 2000). The co-producing partners should also agree on production account(s) to be used for the co-production (Alberstat, 2000). Finally, when partners from different countries co-produce a film, they need to carefully consider the tax consequences of their collaboration. Careful structuring of the collaboration may significantly reduce the tax burden on the co-producing partners. For example, a film co-production between two co-producing partners may be considered a partnership for tax purposes. (Litwak, 2004)

### Rights Clearance

When co-producing partners get together to make a film, it is most often the case that one of the co-producing partners has already acquired the rights to a screenplay or novel (Neumann & Appelgren, 2002). 'Underlying rights' are the first element of what is known as the 'chain-of-title'. 'Chain-of-title' may be defined as "documents evidencing the producer's ownership of the right to the copyright material, on which the film is to be based, all the way from the original author of copyright through to the producer"

(Neumann & Appelgren, 2002:25). Chain-of-title documentation is evidence of a production company's right to produce a film based on the subject matter of the film (Neumann & Appelgren, 2002). A film can be based on existing copyright material, for example, a book, an article, a stage play, a screenplay, a radio play, or someone's life story. In each case, the producer needs the copyright owner's permission and the rights to produce a film (Neumann & Appelgren, 2002).

In addition to the underlying rights, the right clearance is also needed regarding the director of the film and the music used for the film. The director is the person responsible for bringing the script to reality (Neumann & Appelgren, 2002). Parties to the co-production agreement should ensure that any pre-existing contracts for underlying rights materials are in order, or that the originating co-producer has acquired rights over copyright materials prior to entering into the co-production agreement (Alberstat, 2000). It is also recommendable that the right clearance of the music is started at an early stage, especially when copyrighted music is an important part of the film project, since the music may be expensive or perhaps the owner does not provide permission to use the music (Neumann & Appelgren, 2002).

When a co-production agreement is entered into, the co-producing partner who has acquired such rights to copyright material will assign or license those rights to the film co-production under whatever arrangement is most appropriate to the circumstances (Neumann & Appelgren, 2002). As pointed out by Neumann and Appelgren (2002), it is advisable to review contracts for underlying right material at an early stage in order to confirm the ownership of rights and the validity and suitability of the contract for the rights.

### Copyright of the Film and Secondary Rights

One of the characteristics of film co-production is that the final work, the film is the result of interaction between a wide diversity of artistic and creative works (Neumann & Appelgren, 2002). As stated by Neumann and Appelgren (2002), films are artistic works of joint authorship, incorporating multiple rights holders, and from a copyright perspective, films represent the united efforts of a range of rights owners. Further, a distinction should be made between the film itself and the original material carrying the film, and the original material produced, bought or rented for the purpose of creating the film (Neumann & Appelgren, 2002).

Copyright is an owner's exclusive right to control a film by making copies of it and by making it available to the public (Neumann & Appelgren, 2002). Each country has its own copyright laws. Regarding the copyright of a film, common-law countries consider the so-called first owner of the copyright of a film to be the person responsible for the arrangements necessary for making the film. This is usually a production company. Code law countries, such as Finland, consider the author – the person creating the work of art – to be the first owner. Since a film is normally the result of many individual contributions from different people creating independent works of art, a film will have many authors and is, in and of itself, the result of what is called 'joint authorship'. Each author involved in such a creation must approve the use and exploitation of his/her work. The obvious contributors to a film are the director, the scriptwriters, and the musical score composer. However, the director of photography, the art director, the editor, the sound engineer, and perhaps the head of the lighting department, the make-up artists, and others are also creating work that becomes part of the final film and their work may well be copyrighted. The rights of actors, as with musicians, are often known as 'neighboring rights' and they themselves are classified as 'performing artists'. Different rules apply to neighboring rights. Nevertheless, all these rights must be cleared as stated above. Therefore, all the rights of all the independent contributors to a film must be cleared to the production. (Neumann & Appelgren, 2002)

When all the individual creations and works of art have been assembled, a new work of art of its own is created based on the initial underlying rights. Joint ownership of the copyright of the film means that more than one person (or entity) shares the rights to a specific film, which is usually the case in film co-productions. The key to the use and exploitation of the film is the ownership and control of the rights to it. The right of ownership to the film is a key issue, and there are numerous approaches co-producing partners can take to address copyright. One common approach is for co-producing partners to agree upon percentages of ownership rights according to the percentages of the financial contributions of the co-producing partners. (Neumann & Appelgren, 2002)

Although the protection of all property owned abroad is of concern, the protection of intellectual properties is particularly troublesome for firms operating in different legal environments. The failure to protect trademarks, patents, processes, and copyrights can result in losses of these rights in potentially profitable markets. In common law countries, the

ownership of intellectual property rights is generally established by prior use, i.e. whoever may establish the first use is the rightful owner. However, in code law countries, ownership is often established by registration. These variations in laws of different countries have led to international conventions designed to recognize and protect intellectual properties. (Taoka & Beeman, 1991)

Secondary rights are characterized as rights to an independent project or object for commercial exploitation deriving from the primary product (the film itself), such as a book, record, or T-shirt (Neumann & Appelgren, 2002). Baker (1995) defines secondary rights as rights exercisable independently of the film's physical material. The author further argues that "the secondary rights will involve exploitation of a mixture of the elements involved in the original work on which the film or programme is based, and the way in which a film or programme has turned out on screen" (Baker, 1995:233). Secondary rights include publishing rights, merchandising rights, stage rights, radio rights, music rights and rights to the soundtrack, video games, and interactive CD-ROMs (Neumann & Appelgren, 2002; Baker, 1995). 'Merchandising rights' are defined as "right to license, manufacture, and distribute merchandise based on characters, names, or events in a picture" (Litwak, 2004:297). According to Neumann and Appelgren (2002), Internet rights are not considered secondary rights. Rather, the Internet represents a new form for distribution, or a new distribution media.

Finally, the parties to an international film co-production may also separately agree on remake, sequel and prequel rights. 'Remake' may be defined as a new production of a previously made/produced film (Litwak, 2004; Cones, 1992). 'Sequel' may be defined as "a literary work continuing the course of a narrative begun in a preceding one; a feature film that is released after the original and tells a related story that occurred after the story depicted in the earlier released film" (Cones, 1992:470). 'Prequel' may be defined as "a feature film that is released after the original but which actually tells a related story that occurred before the story depicted in the earlier released film" (Cones, 1992:386).

### Commercial Exploitation and Distribution of the Film

Distribution rights are the rights to deal with and exploit a film in specific territories for a specific period of time or for the entire life of the copyright (Neumann & Appelgren, 2002). In addition to the agreement on copyright

ownership of the film, distribution rights may be divided among the co-producing partners. One partner may want the right to distribute the film in certain territories, or the partners may share revenue from all territories (Litwak, 2004). Therefore, co-producing partners should decide whether distribution rights are divided between the partners by territory or otherwise, and determine who shall be responsible for appointing distributors or sales agents in various territories locally or globally. Furthermore, co-producing partners must decide between themselves whether certain territories belong to each other on an “outright basis”. This means that in perpetuity, each co-producing partner owns and controls distribution rights in a given territory. (Neumann & Appelgren, 2002) Moore (2000:83) has further stated that “the provisions of distribution agreements are the life blood of all film companies, which live or die based on the provisions of their distribution agreements”.

### Materials and the Delivery

Co-producing partners should agree on who is responsible for the delivery of the film and materials in the various territories to the various distributors. The notion of distributor is used in a broad sense covering not only distribution companies, but also TV companies or even film institutes, which often have their own limited right of distribution and exploitation, e.g. festival rights and rights to non-commercial exploitation. (Neumann & Appelgren, 2002) Indicating the delivery date for materials may also be a requirement of the financiers (Alberstat, 2000). Naturally, delivery items should also be specified. Co-producing partners should secure their access to the materials, e.g. in the form of a laboratory access letter (Neumann & Appelgren, 2002).

### Profit Participation/Sharing, Recoupment and Collection of Revenues

It is important to understand the difference between sharing ownership of the property and sharing revenue derived from it. The copyright owner of a film determines how the work may be distributed and exploited, and whether to allow any derivative works to be adopted from it. On the other hand, a party having the right to a certain percentage of the net profits from a film has an interest in the revenue stream derived from the film. Such profit participant does not necessarily have any control over how the property is explored. (Litwak, 2004) Once the co-producing partners have determined what each will contribute, they need to decide how they will share any returns (Litwak, 2004). There are first many possible

arrangements for recoupment (Alberstat, 2000). A recoupment order is the order of priority in which investors, financiers and co-producing partners are repaid their loans and investments (Neumann & Appelgren, 2002). Often investors recoup their capital contribution from the first proceeds (Litwak, 2004).

Revenues from the exploitation of a film are often collected by a sales agent or distributor. Another option is for revenues to be collected by the delegate producer or each co-producing partner in its individual territory. A further option is for a collection agency to be hired to collect all revenues. (Neumann & Appelgren, 2002) Whatever the agreed procedure is to be, the co-producing partners should set out the mechanism for collection of revenues (if any) realized by the sale of the completed film (Alberstat, 2000).

### Insurances

A co-production agreement must outline all the different kinds of insurance needed for the film co-production (Neumann & Appelgren, 2002; Alberstat, 2000). One co-producing partner should be designated as the responsible party for arranging all co-production insurance. In addition, the agreement should specify minimum requirements in terms and coverage as well as the various types of policies needed or requested by co-producing partners and their financiers. Normally, responsibility falls to the delegate producer. There are many types of insurance coverage available and exactly what needs to be insured on a production depends on the size and circumstances of the film. When shooting in multiple countries looking into whether laws require different types of insurance before production begins is recommended. (Neumann & Appelgren, 2002) Usual forms of insurance requirements include: (1) liability to third parties during production of the film; (2) insurance against damage or loss of the negative and other property used in the production of the film; (3) insurance against the risk of accident, illness or death of the director, principal cast and crew, and any other person who may be an essential element, and such insurance should include the risk of abandonment of the film resulting from any accident, illness or death; (4) employee liability insurance for the duration of the production; (5) errors and omissions insurance; (6) insurance against moral rights claims and claims for equitable remuneration for rental or lending; and (7) any other insurance which may be required by law before the production takes place (Alberstat, 2000).

More specifically, Errors and Omission (E&O) Insurance is an insurance specific to the film industry. E&O insurance protects the production company, the distributors, and the film from any lawsuit alleging any of the following: libel, slander or other forms of defamation; infringement of copyright, including faulty chain-of-title; invasion of privacy or publicity; incorrect use of format, ideas, names, trade names, service marks, titles, characters, etc. In other words, any claims made by third parties against the material. (Neumann & Appelgren, 2002)

Moreover, a completion guarantee is a highly specialized financial instrument that is extremely vital and central to the movie business, especially in independent film financing (Neumann & Appelgren, 2002). Completion guarantees may be considered as a form of insurance whereby the completion guarantor guarantees to take over and complete production if it becomes apparent that the production cannot be completed within the approval total budget (Alberstat, 2000). It is provided by a “completion guarantor” to ensure that a film will be completed and delivered on budget and in accordance with the script, schedule and technical quality, and by a specified date subject to certain conditions and exclusions. However, it is important to note that a completion guarantee is a performance guarantee and not a general insurance policy. (Neumann & Appelgren, 2002)

### Credits (on screen)

The co-producing partners also need to agree the wording, size and placing of the credits for their companies, their individual credits, and also the credits of creative talent such as the director, writer and actors (Alberstat, 2000). Some credits may be mandatory while others may be determined by contractual obligations or demands of third parties. Specific attention should be paid to mandatory credits that may be required by statutory law for authors of the film work. There are also contractual credit obligations to be kept in mind. For instance, public funding institutions and financiers normally require credits. (Neumann & Appelgren, 2002)

### Confidentiality

It is often recommended that each co-producing partner should be bound by a duty of confidentiality regarding the co-production agreement and the co-producer's business in general (Alberstat, 2000). Confidentiality provisions prevent the co-producing partners from releasing information about upcoming releases, business details, production details, etc. The co-



producing partners should define at least with some specifications which information and data must be considered as confidential. In general, the confidentiality provision is included in the co-production agreement, although a separate confidentiality/non-disclosure agreement can also be used (Alberstat, 2000).

### Termination

The co-production agreement should specify the grounds for termination, which are generally breach of contract or insolvency (Alberstat, 2000). In code law countries, statutory legislation provides rules for determining default and gross default as well as breach of contract, which is a kind of gross default. In common law countries, established practice determines what legally constitutes default, gross default, or breach of contract. If a co-production agreement is silent on this issue the agreement would be interpreted according to the law of the country in question. It is important to keep in mind that laws of default vary from country to country. Further, altering or supplementing statutory legislation to the extent possible and inserting a specific cure practice and/or rules for the consequences may be recommended. (Neumann & Appelgren, 2002)

It makes no sense to try to recommend best practice or wording for any of the specific co-production agreement clauses or the default clause as every deal is different. By all accounts the most difficult problem to deal with when co-producing is when one co-producing partner becomes insolvent. The solvency legislation in the country under which the agreement is governed will also come into play. (Neumann & Appelgren, 2002) Nevertheless, Pekar and Allio (1994) have reminded that giving too little consideration to procedures, penalties for poor performance and arbitration may have a crucial influence on the success of the alliance.

### Assignment of the Agreement

It is important to distinguish the difference between assignment of an agreement and assignment of rights and responsibilities. Assignment here refers to the possibility to assign the agreement. It is normal to limit the possibilities of assignment. *First*, it would not be acceptable to allow a co-producing partner the opportunity to assign its share of the film co-production without the knowledge of the other co-producing partners (Neumann & Appelgren, 2002). *Second*, a co-production agreement in most circumstances is personal to the parties and is not capable of assignment

without the express prior consent in writing of all other parties (Alberstat, 2000).

### Applicable Law and Dispute Resolution

Each agreement should specify the country under whose laws it is to be governed. Co-producing partners should note that if a dispute arises between the partners and the governing law (or jurisdiction) has not been specified then this alone may create complex legal questions. Usually the governing laws are determined by either the co-producing partner who contributes the greatest amount of funding or by the delegate producer. The agreement should further stipulate in which court any dispute between the co-producing partners are to be heard. (Alberstat, 2000) As Keenan and Riches (1995) have reminded, additional terms may be implied into an agreement, even against the wishes of the contracting parties, and specific terms that have been clearly stated may be rendered completely ineffective by operation of the law. This supports the importance of the law that the co-producing partners choose to be applicable to their co-production agreement.

Since no single body of international law exists, firms are restricted by both home and host country law. If a conflict occurs between contracting parties in two or more different countries, a question arises concerning which country's laws are to be used and in which court the dispute is to be settled. An agreement may contain a jurisdictional clause, which indicates that e.g. the jurisdiction lies in the country where the agreement is signed or where the provisions of the agreement are performed, and this clause thus settles the matter with little problem. However, in case there is no jurisdictional clause, the contracting parties have a few choices, i.e. the laws of different countries may be applied. Which laws to apply and in which location to settle a dispute may be totally different decisions that need to be made. (Naarajärvi & Koivisto, 2002) This supports the idea that co-producing partners need to be aware of the different laws of the countries involved, and strengthens the importance of understanding international law regulations.

Laws vary from country to country even within the EU, and the same wording of a clause may be interpreted differently depending on which law is applied. The most common practice is that it is the delegate producer's country, but this could also be decided according to the relative level of funding contributed by each co-producing partner and/or according to the

primary territory where the film is shot. It is also important to designate the jurisdiction in which disputes should be solved. In case the co-production agreement does not specify governing law and jurisdiction, a set of very complicated rules based on private international law would apply and could constitute the framework for a formal court case to determine the appropriate governing law and the right jurisdiction for a dispute. For this reason it is important to include in each co-production agreement a clause determining dispute resolution, governing law, and jurisdiction. Even if the co-producing partner cannot agree on anything else, a rule stipulating that the court's plaintiff shall sue the defendant in its jurisdiction, under its laws and vice-versa, is better than a silent contract on this issue. (Neumann & Appelgren, 2002)

The role of agreements is critical relating to the matter of disputes. Attitudes towards a dispute differ between countries and the interests involved. In this regard managers have perceived that their reputations suffer if they are thought to be unable to control conflicts. In the Anglo cultures, a certain level of open disagreements is treated as inevitable and is tolerated. However, other cultures may be far less certain of how to manage and positively react to disagreements between parties involved. (Mead, 1998) Disputes between contracting parties can be solved through different procedures. If it is not specified in the co-production agreement, the only choice is to go to court. However, the procedures include the following options: court proceedings, arbitration, mediation, and/or individually determined proceedings.

The pros and cons of the various solutions can vary according to which country governs the law of each partner, and indeed the law chosen to govern the co-production agreement. It is quite common to choose arbitration as the final dispute solution in a co-production agreement. Arbitration is considered a faster route to dispute resolution than court proceedings, and it cannot be appealed. Often the arbitration route can be more expensive, as salaries and fees generally have to be paid to the arbitrators, but arbitration is believed to be a more competent forum for disputes, as an arbitrator with special knowledge of the film industry may be appointed. Many general agreements or union agreements dictate arbitration. Mediation is not common in the film industry, even though it actually offers certain advantages to the industry, such as saving time. The mediator is a guide, not a judge, which helps settle legal problems early. Mediation is one of the dispute resolution procedures administered by the

#### Other contractual provisions

It is recommended that co-producing partners also specify customary legal warranties and indemnities in respect of e.g. the following matters: (1) performance of the agreement; (2) financial responsibilities; (3) infringement of copyright; (4) obligation to third parties; and (5) exclusion of libelous, obscene, or defamatory material. These clauses should be drafted according to the specific transaction and circumstances. (Alberstat, 2000) Parties to a co-production agreement are also recommended to include in the agreement provision specifically stating which international treaties are applied, and whether the parties wish to obtain co-production status based on a bilateral or multilateral co-production treaty or if they wish a European funding body to contribute to the co-production (Alberstat, 2000).

Finally, the co-producing partners usually include in their co-production agreement a 'force majeure' clause. A 'force majeure' clause is "a provision in contracts which is intended to excuse a party from performance of its obligations in the event that such performance is prevented by forces outside the control of such party. Typically, such events or forces are partially specified and may include strikes, labor disturbances, etc. The provision may provide for the suspension, extension or termination of the agreement if the event of force majeure continues beyond a specified period of time." (Cones, 1992:202)

#### *2.2.2.3. Commitment and Trust as Influence on Business Contracts*

Chapter 2.2.2. has examined the design of an alliance contract and more specifically a co-production agreement, but there is still one more relevant argument to be made. There are various factors affecting successful partnering and contracting that have been analyzed and grouped by several researchers. According to Segil (1998), while the need for and use of alliances has been apparent, the road to successful partnerships has often been a minefield, although companies have overcome the odds of alliance failure and routinely created successful alliances. The principal factors especially affecting successful partnering and the use of collaborative agreements have been identified to be commitment and trust, and the literature on collaboration has been rather unanimous on the importance of

trust among collaborators (see e.g. Gulati, 1995; Mohr & Spekman, 1994; Lui & Ngo, 2004; Frankel et al., 1996; Ariño et al., 2001; Doz & Hamel, 1998). As pointed out by Marschan-Piekkari et al. (2001), trust is required to compensate for the deficiency inherent in formal agreements, in essence meaning that, no matter how carefully they are compiled, they cannot cover every eventuality.

Nevertheless, trust cannot be overlooked in international film co-productions either. According to Neumann and Appelgren (2002), trust is an asset of prime importance in a film co-production, since it enables parties to overcome cultural conflicts, short-term conflicts of interest, and even communication breakdowns, all of which inevitably arise when discussing contracts and clauses. Accordingly, it must be noted that trust also plays an important role in international film co-productions. No matter how carefully co-production agreements are prepared, such agreements cannot be exhaustive, and well-prepared agreements do not guarantee that disputes may not arise. However, this study does not focus on the role and meaning of trust; which leads to a suggestion for further studies.

### **2.3. Legal Regulation as Influence on International Film Co-Productions**

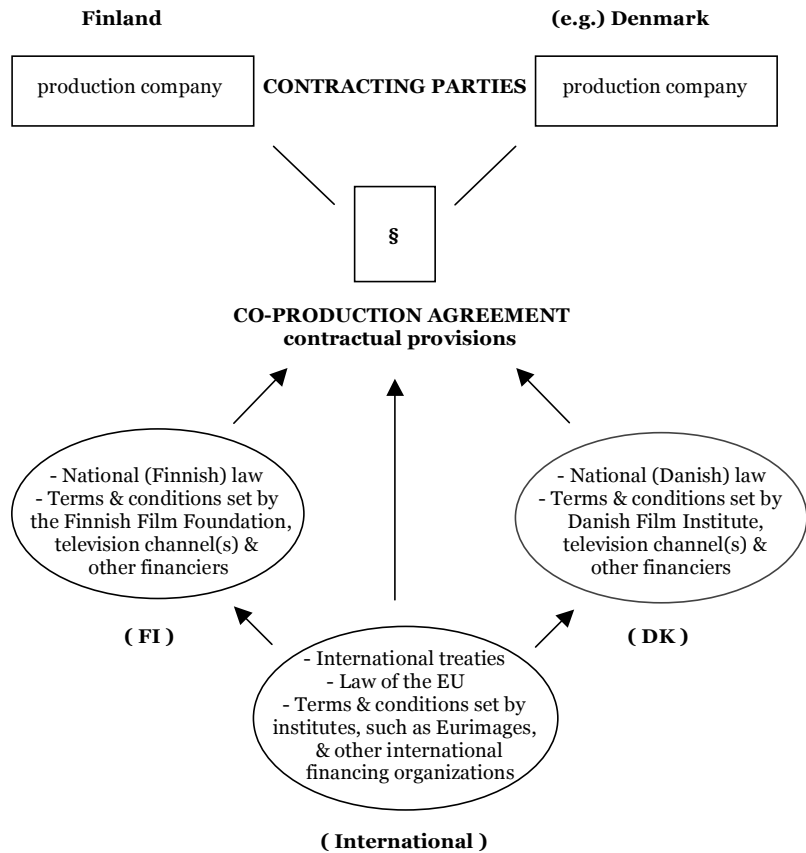
As presented in the introduction chapter, the legal environment is examined in this study to the extent that is adequate and justified in order to support the international business research and to increase understanding of the management of international film co-productions as international alliances not only from the business perspective but also influenced by the legal environment. In order to create a conceptual framework for this multidisciplinary study, in this sub-chapter the legal regulation that has influence on international film co-productions and co-production agreements is studied, and the legal structure for this study is created in two parts. The different legal regulation is first examined in order to illustrate the different legal regulation relating to international film co-productions. Since the Finnish film industry is the case in this study, the applicable legal regulation is further studied from the Finnish film industry perspective with references to international law, contract law, copyright law, and private international law.

### **2.3.1. Legal Regulation Relating to International Film Co-Productions**

#### *2.3.1.1. Legal Environment of International Film Co-Productions*

The contracting parties representing different countries operate under different jurisdictions and are also affected by international law. When production companies as alliance partners form an international film co-production alliance and enter into a co-production agreement, they should be aware of legal regulation affecting their international cooperation. For the purposes of this study, the term 'legal regulation' refers herein to the different sources of law and legal rules.

In order to understand the legal regulation relating to international film co-productions, Figure 4 is presented as an exemplar to illustrate the different legal regulation relating to such international film co-productions. In international film co-productions, there are many parties involved: production companies from different countries as co-producing partners as well as financiers – such as film institutes, television companies, distributors, etc. – and other possible cooperating partners. This leads to a situation where different national laws, international law and different other legal rules and regulations create a rather complicated and confusing legal network. In the example of Figure 4, there are two production companies representing different countries, but it is not unusual that five or more production companies from different countries may be involved in the same international film co-production. Moreover, the production companies as alliance partners enter into co-production agreement(s), influenced not only by the needs and desires of the co-producing partners but also by the legal network referred to above. This reflects the challenge of managing the co-production agreement not only from the business perspective but also from the legal perspective.



**Figure 4.** An example of legal regulation relating to and having influence on international film co-production between production companies representing different countries, such as Finland and Denmark.

In order to better understand the complicated international legal environment referred to above, the following sub-chapters discuss the different sources of law.

#### *2.3.1.2. International Law*

Given that a national policy may conflict with the achievement of some of the nation's own objectives, there is no doubt that some of the policies adopted by nations to achieve their respective goals may lead to international conflicts. In order to minimize these conflicts, nations use persuasion, compromise, and cooperation to conclude inter-governmental agreements. (Taoka & Beeman, 1991) There are numerous bilateral and multilateral organizations, treaties, and agreements in existence. Furthermore, there are a variety of treaties and conventions involved in international business representing international law, and treaties have

been of growing importance in international law. Treaties are the major instruments of cooperation in international relations, and cooperation often involves a change in the relative positions of the countries involved. (Malanczuk, 1997) Only the subjects of international law, namely countries, international organizations, and other traditionally recognized entities, can conclude treaties under international law. However, although an international business contract concluded between parties from different countries is usually subject to a national legal system of one country, these parties are influenced by those treaties that the country has concluded. This is because, if a country concludes a treaty, the legislation of this country must be consistent with the substance of the treaty. (Naarajärvi & Koivisto, 2002)

In addition to multilateral agreements (more than two countries as contracting parties), firms are affected by bilateral treaties and conventions (two countries as contracting parties) between the countries where they do business. Different from the agreements of regional economic groups, there are also agreements involving a limited group of countries/parties, by way of bilateral and multilateral trade agreements. In international business, these agreements are often called trade agreements, which are a form of inter-governmental agreement. (Taoka & Beeman, 1991) Specific problems between two nations are often solved through negotiations that result in bilateral agreements. Such agreements, whether they pertain to disputes, commercial relations, or other problems, provide the basis for long-term relations between those nations (Taoka & Beeman, 1991). Despite the increasing importance of multinational trade agreements, bilateral trade agreements continue to be an important dimension of every national and international commercial activity. Since multilateral agreements involve more than two nations, their effect on international relations may be considered generally to be of greater significance than bilateral trade agreements (Taoka & Beeman, 1991).

The law of the European Union represents regional international law. European community law governs the world's largest single market. Any contracting party representing a member state of the EU must apply the law of the EU. European community law consists of treaties of the European Community, regulations, directives, decisions, opinions, and recommendations. A regulation is a legislative act of the EU which becomes immediately enforceable as law in all member states simultaneously. It can be distinguished from directives which are, at least in principle, binding only on a particular result to be achieved and dependent upon



implementing measures. A decision is a law that is not of general application, but only applies to the particular addressee of the decision. Recommendations and opinions are written statements issued by the Council of the European Union or the Commission that hold considerable guidance value, but without binding force; they do not constitute instructions but rather express the preference of the European Communities and may be disregarded by the member states of the EU. (Joutsamo et al., 1996) International organizations such as the United Nations (UN) and the Organization for Economic Cooperation and Development (OECD) represent multilateral cooperation and also play a very important role in international business. The UN and the OECD have undertaken efforts to develop codes of conduct and guidelines to affect international business.

Finally, it is noteworthy that the term 'international law' almost always means public international law, as opposed to private international law. Public international law primarily governs the relationship between countries, whereas private international law regulates transborder relationships between individuals. Private international law must, therefore, be distinguished from public international law. The only common connection between them is the transborder element of the facts being regulated. (Malanczuk, 1997)

#### *2.3.1.3. Legal Systems and National Laws of Contracting Parties*

A nation's legal system operates within the political framework of that country and serves to operationalize the nation's political and economic systems. Nevertheless, even nations with similar political and economic systems may have different laws. It is essential that the international manager has a working knowledge of the legal systems in which the firm operates. There is no single uniform international law governing international business transactions, nor is there much commonality of laws among countries. In order to minimize potential problems, the international manager should obtain legal services in the firm's home country and host country. When a firm operates in a foreign country, it must abide by the laws and regulations of that country and must conduct its business within the framework of those laws and regulations. (Taoka & Beeman, 1991)

The laws of most countries can be classified into one of two basic types: common law and codified law. Common law is based on past court

decisions, usage and customs, as well as on legal statutes. Even if there is no legal precedent or statute, common law requires the court to make a decision. Codified law, also called Roman law, is organized by subject matter into specific codes: commercial, civil, administrative, and criminal. The codified law is thought to be less flexible and adaptable than common law, but less subject to interpretations, since it does not rely on precedent. (Taoka & Beeman, 1991) Finnish law represents the latter type of law.

After discussing in general the different sources of law that are required to be taken into consideration, the following sub-chapter examines the legal regulation applicable particularly to international film co-productions from the Finnish film industry perspective. In other words, the legal regulation applicable to international film co-productions under Finnish law is studied.

### **2.3.2. Legal Regulation Applicable to International Film Co-Productions from the Finnish Film Industry Perspective**

#### *2.3.2.1. International Treaties*

Both multilateral and bilateral treaties exist relating to international film co-productions. A number of international treaties on international co-production have been agreed to enable a film made under the treaties to claim the nationality of both or all of the countries which are a party to that particular treaty (Baker, 1995). Some countries, such as France and the UK, require that films are produced under a specific treaty in order to benefit from national public support (Neumann & Appelgren, 2002). In order to qualify as an official co-production, i.e. “the right authority in the said country has approved that the national criteria have been fulfilled and hence has approved the agreement”, some countries require that the international film co-productions are set up under bilateral or multilateral treaties (Neumann & Appelgren, 2002:13). Qualification certifications may be advantageous and affect the commercial value and potential of a film, but co-producing a film under a co-production treaty may also be disadvantageous since complications and difficulties may arise (Neumann & Appelgren, 2002). As argued by Neumann and Appelgren (2002), ideally a co-production treaty is in place to make it easier to comply with rules and regulations in a foreign country, therefore, the qualification criteria should be carefully considered in order to determine whether it is applicable to a film in question.

Different from France and the UK, in some countries it is much more common to co-produce a film without a treaty; such arrangements are found in Germany and the Nordic countries (Neumann & Appelgren, 2002). One main advantage of a non-treaty co-production is freedom in the contractual agreement. However, as reminded by Neumann and Appelgren (2002), producing without a co-production treaty also means that the co-production agreement is the only reference and there are no supplemental treaty rules or regulations to fall back on. This puts more pressure and focus on making the co-production agreement as complete, well thought-out and correct as possible.

The following three international treaties are of special importance and applicable to international film co-productions and the Finnish production companies entering into such co-productions:

#### European Convention on Cinematographic Co-production <sup>4</sup>

According to the summary, the aim of the Convention is to promote the development of European multilateral cinematographic co-production, to safeguard creation and freedom of expression, and to defend the cultural diversity of the various European countries. As stated by the Council of Europe in the Explanatory Report of the Convention, European cultural cooperation in the cinema field takes place primarily through co-productions, and in the joint efforts to support creation the rules governing state support for film production are not always the same. Therefore, according to the Explanatory Report, the main objectives of the Convention are to minimize these differences and to harmonize multilateral relations between states when they decide to co-produce a film.

As stated in the Explanatory Report, since the Convention is designed to encourage the development of film co-productions in Europe, the Convention tries to simplify procedures and production on the basis of criteria established by the Eurimages fund, i.e. the Council of Europe fund for the co-production, distribution and exhibition of European cinematographic works (discussed in more detail in Chapter 2.3.2.3). The Convention also constitutes a step forward in lowering the threshold of financial participation in co-productions, and in permitting financial co-productions, provided these promote European identity. This requirement concerning identity is in some respects the guiding principle of the Convention, which is inspired by a versatile but unified vision of European

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<sup>4</sup> European Treaty Series No. 147; entry into force: April 1, 1994.

film production. In fact, the Convention has the advantage of providing a common legal basis, governing the multilateral cinematographic relations of all states parties to the Convention. (Explanatory Report of the Convention)

By December 31, 2010 the Convention had been ratified by 42 countries, Finland signed and ratified the Convention in 1995. The Convention is a multilateral co-production treaty which can, however, also be applied to bilateral co-productions in the absence of any agreement governing such co-production i.e. there is no other treaty in place (Article 2, paragraphs 1 and 4 of the Convention). In case of multilateral co-productions, the provisions of the Convention shall override those of bilateral agreements between parties to the Convention (Article 2, paragraph 3 of the Convention). The Convention shall govern relations between the parties in the field of multilateral co-productions originating in the territory of the parties. The parties refer to those that are parties to the Convention, i.e. the Convention may be invoked only by producers who are nationals of states which are parties to the Convention. This means that the Convention shall apply to co-productions involving at least three co-producers, established in three different parties to the Convention. However, the Convention may also be applied to co-productions involving at least three co-producers established in three different parties to the Convention and one or more co-producers who are not established in such parties. In such case, the total contribution of the co-producers that are not established in the parties to the Convention may not exceed 30% of the total cost of the production. (Article 2, paragraphs 1 and 2 of the Convention, and the Explanatory Report)

In order to obtain co-production status, certain conditions and qualifying criteria must be applied. *First*, in the case of multilateral co-productions, the minimum contribution may not be less than 10%, and the maximum contribution may not exceed 70% of the total production cost of the cinematographic work. When the minimum contribution is less than 20%, the party concerned may take steps to reduce or bar access to national production support schemes. In case the Convention takes the place of a bilateral treaty between two parties, the minimum contribution may not be less than 20% and the largest contribution may not exceed 80% of the total production cost of the cinematographic work. (Article 6 of the Convention)

*Second*, in order to benefit from the Convention, the co-producers must submit an application for co-production status and a set of documents for

approval to the competent authorities in accordance with the procedures laid down in Appendix I of the Convention (Article 5, paragraphs 1 and 2 of the Convention). *Third*, the co-produced film must meet the conditions laid down in Appendix II of the Convention in order to be defined as European cinematographic work. According to the points system of Appendix II of the Convention, the co-produced film needs to achieve a minimum of 15 points out of a possible 19 so called “European elements” (see Appendix II of the Convention for more detailed information). (Article 3 and Appendix II of the Convention) *Fourth*, the Convention regulates rights of co-producers by requiring that the co-production contract must guarantee to each co-producer joint ownership of the original picture and sound negative. Further, the negative shall be kept in a place mutually agreed by the co-producers, and shall guarantee them free access to it as well as the right to an internegative or to any other medium of duplication. (Article 7 of the Convention) *Fifth*, according to Article 8 of the Convention, the contribution of each of the co-producers shall include effective technical and artistic participation. In principle, the contribution of the co-producers relating to creative, technical and artistic personnel, cast, and facilities, must be proportional to their investment. Further, subject to the demands of the screenplay, the technical and craft team involved in filming the work must be made up of nationals of the states which are partners in the co-production. (Article 8 of the Convention) *Sixth*, co-producing countries shall be credited in co-produced cinematographic works, and the names of these countries shall be clearly mentioned in the credit titles, in all publicity and promotion material, and when the cinematographic works are being shown (Article 12 of the Convention).

*Finally*, the Convention further covers regulation on the following: requirements on adequate technical and financial means and sufficient professional qualifications for co-production companies (Article 5, paragraph 4 of the Convention); the requirements for financial co-productions (Article 9 of the Convention); the requirements for the general balance of investments and compulsory artistic and technical participation (Article 10 of the Convention); the measures to be taken by the co-producing parties to facilitate the production and export of the cinematographic work, and the right of each party to demand a final version of the cinematographic work in one of the languages of that party (Articles 11, 13 and 14 of the Convention); and the right of the majority co-producer (i.e. the delegate producer) to show the co-produced cinematographic work at international festivals, unless otherwise decided by the co-producers (Article 15 of the Convention).

Once the conditions have been fulfilled, the Convention assimilates all co-productions, which have been given the prior approval of the competent authorities of the parties, with national films. The chief aim of the Convention is to confer on cinematographic works that can lay claim to it the nationality of each of the partners in the co-production. Assimilation to national films is regulated in Article 4 of the Convention, according to which, co-productions falling within the scope of the Convention shall be entitled to the benefits granted to national films by the legislative and regulatory provisions in force in each of the parties to the Convention participating in the co-production concerned. Further, the benefits shall be granted to each co-producer by the party in which the co-producer is established. (Article 4 of the Convention, and the Explanatory Report)

Film and Television Co-Production Agreement between the Government of the Republic of Finland and the Government of Canada <sup>5</sup>

This Treaty was signed in 1998 and ratified in 1999 between Finland and Canada in order to establish a framework for audiovisual relations and particularly for film, television, and video co-productions. The countries signed the Treaty conscious that quality co-productions can contribute to the further expansion of the film, television, and video production and distribution industries of both countries as well as to the development of their cultural and economic exchanges. The countries were further convinced that these exchanges would contribute to the enhancement of relations between the two countries. The purpose of this Treaty is that every co-production produced under the Treaty shall be considered to be a national production for all purposes by and in each of the two countries. Accordingly, each such co-production shall be fully entitled to take advantage of all benefits currently or later available to the film and video industries. (Article I, paragraph 4 of the Treaty)

In order to benefit from the Treaty, certain conditions must be fulfilled. The Treaty regulates co-productions by setting the following conditions: *First*, co-productions must be approved by specific authorities representing each country. In Finland, the competent authority is the Minister responsible for cultural affairs or, if authorized, the Finnish Film Foundation. Every co-production must also be produced and distributed in accordance with the national legislation and regulations in force (Article I, paragraphs 2 and 3 of the Treaty). *Second*, the benefits of the Treaty apply

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<sup>5</sup> Treaty Series of the Statutes of Finland, 24/1999.

only to co-productions undertaken by producers who have good technical organization, sound financial backing, and recognized professional standing (Article II of the Treaty). *Third*, the proportion of the respective contributions of the co-producers of the two countries may vary from 20%, for the minority co-producer, to 80%, for the majority co-producer, of the budget for each co-production (Article III, paragraph 1 of the Treaty). *Fourth*, each co-producer shall be required to make an effective technical and creative contribution, in principle, the contribution to be in proportion to the investment (Article III, paragraph 2 of the Treaty). *Fifth*, the producers, writers and directors of co-productions as well as the technicians, performers and other production personnel participating in such co-productions, must be Finnish or Canadian citizens, or permanent residents of Finland or Canada, although some exceptions may be provided by the Treaty (Article IV of the Treaty). *Sixth*, live action shootings and animation works, if applicable, must, in principle, be carried out alternately in Finland and in Canada, and the laboratory work shall be done in either Finland, Canada or a member state of the European Economic Area, however, with certain exceptions provided by the Treaty (Article V of the Treaty). *Seventh*, the original sound track of each co-production shall be made in either English, French, Finnish or Swedish, shooting in any two, or in all, of these languages is permitted, and the dubbing or subtitling of each co-production shall be carried out respectively in Finland or Canada (Article VII of the Treaty).

*Finally*, the Convention further covers regulation of the following: favorability for certain multi-party co-productions (Article VI of the Treaty); the regulation on productions produced under a twinning arrangement to be considered as co-productions and to receive the same benefits (Article VIII of the Treaty); the number of the copies of materials (Article IX of the Treaty); the measures to be taken by the co-producing parties to facilitate co-production (Article X of the Treaty); the sharing of revenues by the co-producers, in principle, to be proportional to their respective contributions to the production financing and be subject to approval by the competent authorities (Article XI of the Treaty); the management of quota regulations (Article XIII of the Treaty); the identification of a co-production in the credits (Article XIV of the Treaty); and the presentation of a co-production at international film festivals (Article XV of the Treaty).

Agreement concerning Cinematography between the Government of the Republic of Finland and the Government of the Republic of France <sup>6</sup>

The first international treaty of Finland regarding the film industry was entered into between Finland and France in 1983. The Treaty was signed to facilitate the co-production of films which, by virtue of their artistic and technical merits, are likely to enhance the prestige of the two countries, and to develop exchanges of films between them. According to the Treaty, co-production films covered by the Treaty shall be treated as films of national origin by the authorities of the two countries in accordance with the legislative provisions and regulations applicable in their country. Further, such films shall enjoy as of right the privileges accorded to national films. (Article 1, paragraphs 1 and 2 of the Treaty)

In order to benefit from the Treaty, certain conditions must be fulfilled, and the Treaty regulates co-productions by setting the following conditions: *First*, the making of co-production films by the two countries shall require the approval of the competent authorities, which in Finland is the Finnish Cinema Foundation i.e. the Finnish Film Foundation (Article 1, paragraph 3 of the Treaty). *Second*, in order to enjoy co-production privileges, films must be made by co-producers who have an organization and experience recognized by the national authority (Article 2 of the Treaty). *Third*, the co-producers must submit an application for co-production status and a set of documents for approval to the competent authorities in accordance with the procedure set forth in the annex to the Treaty (Article 3 of the Treaty). *Fourth*, the economic, technical and artistic contributions of the producers of the two countries to a co-production film may vary between 30% and 70% (Article 4, paragraph 1 of the Treaty). *Fifth*, films must be made in the national language of one of the two countries or in the two languages, and by directors and with technicians and performers who have the status of Finnish or French nationals or of foreigners normally residing and employed in Finland or France, unless otherwise permitted according to the Treaty (Article 4, paragraphs 2, 3 and 4 of the Treaty). *Sixth*, in principle, receipts shall be divided in proportion to the total contribution of each co-producer; and the financial provisions adopted by the co-producers and the zones for sharing receipts shall be subject to the approval of the competent authorities of the two countries (Article 7 of the Treaty).

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<sup>6</sup> Treaty Series of the Statutes of Finland, 7/1983; English translation: United Nations Treaty Series, Vol. 1317, No 21935.



*Finally*, the Treaty further covers regulation of the following: the regulation of studio scenes, original negative, inter-negative and laboratory (Article 5 of the Treaty); export arrangements for co-production films to be made by the majority co-producer unless otherwise agreed upon in the co-production contract (Article 8 of the Treaty); credits, trailers and advertising material for co-production films to indicate that the film is a Finnish-French co-production (Article 9 of the Treaty), and the presentation of the co-produced films at festivals and in competitions (Article 10 of the Treaty); the measures to be taken to facilitate co-production (Article 13 of the Treaty); and the unrestricted exchange of films (although subject to the laws and regulations in force) (Article 14 of the Treaty).

### *2.3.2.2. Finnish Law*

As specified above, generally one national law applies to a business contract. The parties entering into agreement should be aware of all the laws and regulations relevant to their agreement, since the parties may choose a specific national law to be applied to their business contract and in case no law is chosen, private international law determines the law to be applied. In other words, only if Finnish law has been chosen to be the applicable law, or Finnish law is to be applied based on the international conventions, is Finnish law applied.

Finnish law does not include any specific acts or decrees on film production, co-production or the film industry. Nevertheless, despite such lack of specific regulation, whether national or international, some laws relate to international film co-productions. While entering into co-production agreements under Finnish law, the production companies should be aware of international law applicable to Finland as discussed above, as well as specific acts and decrees having articles applicable to international film co-productions. Regarding the key contractual provisions of co-production agreements discussed in Chapter 2.2.2.2., Finnish law regulates contracts, copyrights, and applicable law and dispute resolution/jurisdiction. Consequently, these fields of law and specific acts and decrees are next studied for the purposes of this study i.e. to the extent they have an influence on international film co-productions under Finnish law.

Since international law has been already discussed above, this sub-chapter focuses on studying the other fields of law. Contract law is

discussed hereunder, followed by the specific examination of the Contracts Act (228/1929) regulating contracts under Finnish law. Thereafter, regarding intellectual property law, the Copyright Act (404/1961) and the Copyright Decree (574/1995) are examined and discussed to the extent that they have influence on international film co-productions. Finally, how the private international law relates to such international film co-productions is examined.

### Finnish Law on Contracts

#### *Contract Law*

The exchange of goods and services is a central feature of business activity and contract law provides the means of supporting exchange transactions in our society. In essence the law of contract facilitates the process of exchange, supporting the expectations of the parties in respect of performance of the undertakings forming part of an agreement. (Savage & Bradgate, 1993) One basic principle relating to the use of contracts is that they are governed by a rule of the binding force of contracts, ‘pacta sunt servanda’, derived from the general protection of good faith (Pöyhönen, 2002). Further, in most countries, including Finland, the fundamental principle of contract law has been the freedom of contract based on the general freedom of action (Hemmo, 2003; Pöyhönen, 2002). As pointed out by Hemmo (2003), Pöyhönen (2002), as well as Neumann and Appelgren (2002), contracting parties are free to enter into any type of contract with any type of content, which they may choose freely. However, the freedom of contract is not without limits, as it may be restricted through mandatory rules of law intended to guarantee a minimum protection for certain groups of people, usually the weaker of the contracting parties (Hemmo, 2003; Pöyhönen, 2002; Neumann & Appelgren, 2002).

Hemmo (2003) has specifically argued the distinction between mandatory and dispositive norms to be an essential question. A contractual provision contrary to a mandatory norm is void and the mandatory norm is applied. In contrast, the contracting parties may make deviating decisions from dispositive norms in their business contracts, including co-production agreements. The difference between mandatory and dispositive norms as well as the hierarchy of legal norms is further discussed in Chapter 3.5. which addresses the legal research methodology.

Regarding Finnish contract law, Hemmo (2003) has pointed out as relevant the contractual sources of law and contractual argumentation. The contractual sources of law include the national sources of law and international sources of law, and the contractual argumentation relates to some useful approaches to the contract law named as the basic arguments of contract law. (Hemmo, 2003) Before examining the Contracts Act as the source of the Finnish contract law, it is noteworthy to take into consideration the following basic arguments of contract law identified by Hemmo (2003): *First*, the purpose of a contracting party or parties is often a noteworthy approach. *Second*, the purposes connected to a contract are close to the conditions the parties may have. *Third*, the contracting parties are called for loyalty. *Fourth*, relating to the requirement of loyalty, there is a prohibition of the misuse of rights. *Fifth*, economic rationality is one approach, and *finally*, an alternative economic approach to argumentation is consideration to which contracting party is the appropriate risk bearer for which risk relating to a contract. To conclude, according to Hemmo (2003), there is no unambiguous answer to the question on the “right” theoretical basis of Finnish contract law and the relative persuasiveness of the different arguments, for two reasons. The first is the variety of contracts, and the second is the lack of the authoritative support, in other words, the institutions with norm giving authority – the legislator and the supreme court – only go into a small part of the contractual dilemmas in detail. (Hemmo, 2003)

One more valuable approach to contracts is defined by Hemmo (2005) who identifies contract tactics, contract technique and contract management as essential parts of contracting. Contract tactic closely relates to the negotiations of contracts and contract management to the overall management of contracts from drafting to changes and interpretation of contracts. Contract technique also partly refers to the drafting of contracts, but in particular to the choice of contractual provisions and the content of contracts. Hemmo (2005) has identified the meaning of the evaluation of objectives and interests of contracting parties as well as risks relating to the content and the specificity of each contract. However, according to Hemmo (2005), the contract technique and the specificity of each contract should be analyzed case by case influenced by a variety of different factors. Further, relating to contracting and partly to the specificity of a contract, contracting parties may use a so called ‘preliminary agreement’ as an intermediate stage before entering into a complete main agreement. Under Finnish law such preliminary agreement clearly differs from documents such as ‘letter of intent’ and ‘memorandum of understanding’, since such preliminary

agreement establishes full contractual commitment binding contracting parties to enter into a main agreement as specified in the preliminary agreement. (Hemmo, 2005)

From an international perspective and generally applied, according to Keenan and Riches (1995), there are some essential ingredients of a contract to be recognized: agreement, consideration, intention, form, capacity, genuineness of consent, and legality. As stated by Keenan and Riches (1995), there must be an agreement, i.e. a reasonably definite understanding between two or more persons (natural or juristic), to be a legally binding contract. In terms of the law the paramount factor is the intention of the parties to be inferred from their words or conduct. If the intentions of the contracting parties are not the same, there can be no agreement. Consideration means that the contracting parties must show that their agreement is part of a bargain, i.e. each side must promise to give or do something for the other. Intention refers to the fact that the law will not concern itself with purely domestic or social arrangements. The contracting parties must have intended their agreement to have legal consequences. Regarding form, in some cases specific formalities, e.g. writing, must be observed. Capacity means that the contracting parties must be legally capable of entering into a contract, and genuineness of consent means that the agreement must have been entered into freely and involve a 'meeting of minds'. Finally, legality refers to the purpose of the agreement, which must not be illegal or contrary to public policy. (Keenan & Riches, 1995)

A contract possessing all these requirements is considered to be valid. If one of the contracting parties fails to live up to its promises it may be sued for a breach of contract. The absence of an essential element will render the contract to be void, voidable, or unenforceable. The term 'void contract' means that at no time has there been a contract between the contracting parties. A 'voidable contract' may operate in every respect as a valid contract unless and until one of the contracting parties takes steps to avoid it, e.g. contracts founded on a misrepresentation and agreements made by minors. An 'unenforceable contract' is a valid contract but it cannot be enforced in the courts if one of the contracting parties refuses to carry out its terms. (Keenan & Riches, 1995)

Under Finnish law, contracts are regulated by the Contracts Act entered into force in 1929 and amended a few times thereafter. The Contracts Act regulates contracts relating to the conclusion of contracts, authorization, invalidity, and adjustment of contracts, and some miscellaneous issues.

*First*, the Contracts Act regulates the conclusion of contracts by stating that “an offer to conclude a contract and an acceptance of such an offer shall bind the offeror and the acceptor”, as provided for in the Act (Chapter 1, Section 1). In other words, a contract comes into existence when there is an offer and an approving reply i.e. an acceptance (Saarnilehto et al., 2001). According to Chapter 1 of the Contracts Act, an offer and an approving response to the offer bind the offeror and the acceptor based on the protection of the trust of the adverse party (Saarnilehto et al., 2001). However, as pointed out by Hemmo (2003), the contract mechanism regulated in the Contracts Act is not the only way to establish contractual obligations. The formula of an offer and an acceptance does not always work, since as characteristic to a negotiation, the negotiating parties often want to discuss the content of the contract without any particular liability and commitment. (Hemmo, 2003)

*Second*, Chapter 2 of the Contracts Act regulates authorization and must be applied in case a person has authorized another to conclude contracts or to enter into other transactions. *Third*, Chapter 3 of the Contracts Act regulates the invalidity and adjustment of contracts, including cases such as coercing, fraudulent inducement, misleading error of information, incompatibility with honor, stimulated document, and unfair contract term.

As is obvious, the Finnish Contracts Act only regulates contracts in general terms relating to their use and has rather limited influence on co-production agreements of international film co-productions, having e.g. no regulation on the content of such agreements. In other words, although a certain national law is chosen to be applied this does not mean that such law would give any answers to different issues. For example, with regard to Finnish contract law, it hardly regulates at all the substance of a contract. The consumer as a contracting party is protected by some laws, but business contracts are barely regulated. Therefore, it is important that all the relevant issues of an international film co-production are included in the business contract and not left unresolved.

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<sup>7</sup> Contracts Act 228/1929.

*Copyright Act* <sup>8</sup>

The Finnish Copyright Act was entered into force in 1961. The Act has been amended several times and particularly in 2005 it was updated to be consistent with the changes in the audiovisual environment. In general, the Copyright Act regulates the object and content of copyright, limitations of copyright, transfer of copyright, validity of copyright, neighboring rights and penalty provisions. Copyrights have been discussed in Chapter 2.2.2.2., including the distinction between a person creating a work of art as the first owner of copyright and films as artistic works of 'joint authorship'. This chapter discusses Finnish law relating to international film co-productions and the copyrights involved, since the Copyright Act may influence international film co-productions.

In general, the Copyright Act regulates how and when copyright comes into existence and the rights of the copyright owner on his/her work. According to Chapter 1, Section 1 of the Copyright Act:

“A person who has created a literary or artistic work shall have copyright therein, whether it be a fictional or descriptive representation in writing or speech, a musical or dramatic work, a cinematographic work, a photographic work or other work of fine art, a product of architecture, artistic handicraft, industrial art, or expressed in some other manner. (446/1995)”.

Therefore, copyright may only come into existence for a natural person, not for a legal person/entity, but the copyright may be assigned and transferred e.g. to a firm. As stated previously, concerning a co-produced film, there are many copyright owners involved such as screenwriters, directors, directors of cinematography, etc. and these rights must be cleared in order to produce a film and to distribute, exploit and otherwise benefit the film. As argued by Haarmann (2005), Chapter 1, Section 1 of the Copyright Act reflects that copyright only applies to 'independent and individual work', the exclusive rights of copyright owner restricted in Chapter 2.

According to Haarmann (2005), a cinematographic work refers in the Copyright Act to a work of moving images or moving images and sound as well as other works considered equal to filming which cross the originality

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<sup>8</sup> Copyright Act 404/1961 & Decree 574/1995.

<sup>9</sup> Translation from the definition: “itsenäiset ja omaperäiset teokset” (Haarmann, 2005:60).

requirement<sup>10</sup>. The Copyright Act further recognizes so called neighboring rights, and Chapter 5, Section 46a provides a producer of a film with specific protection based on the Directives of the Council of the EU on rental rights and lending rights and on certain rights related to copyright in the field of intellectual property<sup>11</sup>. According to Directive 2006/115/EC, the producer of the first fixation of a film in respect of the original and copies of the film shall have the exclusive right to authorize or prohibit rental and lending (Article 3 of the Directive) as well as the exclusive right to make available to the public by sale or otherwise such objects indicated (Article 9 of the Directive). This is adapted to the Copyright Act as Section 46a as follows:

“(1) A film or any other device on which moving images have been recorded shall not, without the producer’s consent, until 50 years have elapsed from the year during which the recording took place: 1. be transferred on to a device by means of which it can be reproduced; 2. be distributed to the public; 3. be communicated to the public by wire or by wireless means in a manner which enables members of the public to access the work from a place and at a time individually chosen by them.

(2) If the recording is published or made public before 50 years have elapsed from the year of recording, the protection conferred by subsection 1 shall subsist until 50 years have elapsed from the year during which the recording was published or made public for the first time.” (821/2005)

Moreover, for the purposes of this study, co-producing parties should note particularly certain articles of the Copyright Act in case Finnish law is applied to the co-production agreement. *First*, according to Chapter 1, Section 3 of the Copyright Act:

“(1) When copies of a work are made or when the work is made available to the public in whole or in part, the name of the author shall be stated in a manner required by proper usage.

(2) A work may not be altered in a manner which is prejudicial to the author’s literary or artistic reputation, or to his individuality; nor may it be made available to the public in such a form or context as to prejudice the author in the manner stated.

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<sup>10</sup> Translation from the text: “Elokuvateoksella tarkoitetaan tekijänoikeuslaissa liikkuvina kuvina tai liikkuvina kuvina ja äänenä ilmeneviä teoksia sekä muita elokuvaamiseen rinnastettavalla tavalla ilmaistuja teoksia, jotka ylittävät teoskynnyksen.” (Haarmann, 2005:79).

<sup>11</sup> See Directive 2006/115/EC, Official Journal L 376, replacing 92/100/EEC.

(3) The right conferred to the author by this section may be waived by him with binding effect only in regard of use limited in character and extent.”

This is the provision on so called moral rights, ‘droit moral’, which lie with the author, in principle, in perpetuity (Neumann & Appelgren, 2002). ‘Droit moral’ is a French term for moral rights, “a doctrine of artistic integrity that prevents others from altering the work of artists, or taking the artist’s name off of the work, without the artist’s permission” (Litwak, 2004:294). This is different especially from the Anglo-American legislation according to which such moral rights are transferable (Salokannel, 1997). Further, the acceptability of the alteration of the work is always evaluated objectively. However, sometimes already resulting from the nature of a work, the work is allowed to be altered (Haarmann, 2005)<sup>12</sup>. For example, when a literary work is filmed, it is generally considered acceptable that the script may be extensively altered (Haarmann, 2005)<sup>13</sup>.

*Second*, according to Chapter 3, Section 28 of the Copyright Act:

“Unless otherwise agreed, the person to whom a copyright has been transferred may not alter the work or transfer the copyright to others. When copyright is held by a business, it may be transferred in conjunction with the business or a part thereof; however, the transferor shall remain liable for the fulfillment of the agreement.”

This also relates to the above-mentioned right of alteration. The basic noteworthy rule is that if a production company desires to alter a work and/or to transfer the acquired copyrights further to a third party, it must be so agreed upon. However, *third*, the Copyright Act (Chapter 3, Section 39) regulates film contracts and the transfer of rights separately, as follows:

“A transfer of the right to make a film on the basis of a literary or artistic work shall comprise the right to make the work available to the public by showing the film in cinemas, on television or by any other means, and the right to provide the film with subtitles and to dub the film in another language.” (648/1974)

Film contracts are further regulated by Chapter 3, Section 40 of the Copyright Act, as follows:

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<sup>12</sup> Translation from the text: ”Toisinaan jo asian luonnosta johtuu, että teosta on lupa muuttaa.” (Haarmann, 2005:148).

<sup>13</sup> Translation from the text: ”Esimerkiksi kun kirjallinen teos elokuvataan, pidetään yleisesti hyväksyttynä, että elokuvakäsikirjoitukseen saadaan tehdä suuriakin muutoksia.” (Haarmann, 2005:148).



“(1) When the right to use a literary or musical work for a film intended for public showing is transferred, the transferee shall produce the film and make it available to the public within a reasonable time. If this is neglected, the author may rescind the contract and keep any remuneration received; the author shall also be entitled to compensation for any damage not covered by the remuneration.

(2) If the film has not been produced within five years from the time at which the author fulfilled his obligations, the author may rescind the contract and keep any remuneration received, even if there is no dereliction on the part of the transferee.”

This provision aims to support the fact that copyrighted work shall be made available to the public.

### Finnish Law on Applicable Law and Jurisdiction

#### *Private International Law*

Laws vary between countries, and there is a complicated set of rules in almost every country, directing the courts when to exercise jurisdiction in cases involving a foreign element, when to apply foreign law in cases involving a foreign element, and when to recognize or enforce the judgments of foreign courts (Malanczuk, 1997). These rules are known as private international law that regulates both the choice of law and jurisdiction.

As discussed above, the contracting parties may choose a specific national law to be applied to their business contract, but in case no law is chosen, private international law determines the law to be applied. The *Regulation of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I)*<sup>14</sup> is the principal instrument governing contractual choice of law replacing the Rome Convention. The Regulation is directly applicable to all EU member states including Finland.

Article 1 of the Regulation defines the material scope of the Regulation as follows:

“This Regulation shall apply, in situations involving a conflict of laws, to contractual obligations in civil and commercial matters.”

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<sup>14</sup> Reg 593/2008/EC, Official Journal L 177 of 2008.

However, Article 1 also includes some specific situations excluded from the scope of the Regulation. Further, the main principle of the Regulation is that the contracting parties are free in the choice of the law that shall apply to their contract. Article 3, paragraph 1 of the Regulation specifically states:

“A contract shall be governed by the law chosen by the parties. The choice shall be made expressly or clearly demonstrated by the terms of the contract or the circumstances of the case. By their choice the parties can select the law applicable to the whole or to part only of the contract.”

Article 4 of the Regulation defines the rules on applicable law in the absence of choice. Article 4, paragraph 1 of the Regulation defines applicable law relating to some specific contracts, and in case a contract is not covered by paragraph 1, paragraph 2 states a general rule as follows:

“..., the contract shall be governed by the law of the country where the party required to effect the characteristic performance of the contract has his habitual residence.”

Further, in case the applicable law cannot be determined pursuant to paragraphs 1 or 2, paragraph 4 defines the final rule as follows:

“..., the contract shall be governed by the law of the country with which it is most closely connected.”

Based on the facts referred to above, needless to say, the importance of making the choice of law between the contracting parties and expressing it clearly in the contract cannot be emphasized enough since there is much variation in international film co-productions.

Closely relating to the applicable law, jurisdiction is also regulated by private international law. There have been several attempts to unify the private international law regarding jurisdiction and enforcement of judgments. The *Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters 1968*<sup>15</sup> was first concluded by and between some member states of the European Community. The *Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters of 1988*<sup>16</sup> was concluded in order to expand the territorial scope of the Brussels Convention to include the EFTA states. The European Union adopted new rules on jurisdiction in 2002 by being

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<sup>15</sup> Official Journal C 59/1 of 1979.

<sup>16</sup> Official Journal L 319 of 1988.

committed to the Brussels Convention by adopting the *Council Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters*<sup>17</sup> which is directly applicable to all EU member states including Finland. These international conventions and EU regulations applicable to Finland have further been adapted to Finnish law by means of national laws including procedural law.

Nevertheless, since there are different rules to be applied worldwide depending on the country in question, it is highly recommended to prefer choosing the home country for jurisdiction and dispute resolution in a co-production agreement. In cases that there are no rules of jurisdiction included in the agreement, international conventions are applied. Moreover, in the case of choosing the jurisdiction of any other country than the home country, the contracting party should be aware of the legal regulation on jurisdiction in such country. It is also noteworthy that all the possible legal proceedings relating to a co-production agreement are to be processed in the chosen country for jurisdiction. Furthermore, as stated in Chapter 2.2.2.2., disputes between contracting partners can be solved through different procedures. If it is not specified in the co-production agreement, the only choice is to go to court. However, the procedures include court proceedings, arbitration, mediation and individually determined proceedings, and it is further noteworthy that such procedures also vary between the countries leading to the strong supporting argument that the choice of law and jurisdiction are clearly specified in each co-production agreement.

### *2.3.2.3. Rules and Regulations of Financiers*

There are a number of funds specifically established to support film productions involving more than one producer from more than one country. Further, their purpose is to foster international cooperation between filmmakers, and the criteria for selection are usually qualitative, besides being governed by a set of predetermined rules. (Dally et al., 2002) Especially in Europe, international co-productions are actively supported by various funding programs created by the Council of Europe and the European Union (Alberstat, 2000). There are regional organizations such as the MEDIA programme of the EU that supports the European film industry and especially Eurimages, founded by the Council of Europe, providing financing for European co-productions. Moreover, each country also has own national funding programs, foundations, institutes and other

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<sup>17</sup> Council Reg 44/2001/EC, Official Journal of L 012 of 2001.

organizations. When negotiating and agreeing upon the contractual provisions of a co-production agreement, each contracting party should take into account all the guidelines and regulations set by the financiers involved in the international film co-production.

From the Finnish film industry perspective, the key financiers can be identified as Eurimages and the MEDIA Programme promoting the European film industry, Nordisk Film & TV Fond promoting Nordic films, and the Finnish Film Foundation promoting Finnish films. Next, the key rules and regulations of such financiers are discussed relating to international film co-productions.

### Eurimages

Eurimages is the Council of Europe fund for the co-production, distribution and exhibition of European cinematographic works set up in 1988, and by December 31, 2010 having 34 member states. Eurimages aims to promote the European film industry by encouraging the production and distribution of films and fostering cooperation between professionals. One of Eurimages' four funding programs is assistance for co-production; in fact, the majority (almost 90%) of the Fund's resources (which originate from member states' contributions) goes to supporting co-production. Eurimages has its own Regulations for the support of co-production of full-length feature films, animation and documentaries<sup>18</sup>, and the eligibility criteria (Chapter 1 of the Regulations) consists of provisions on general issues; eligible producers; co-production structure; participation of producers and financiers established in non-member states of the Fund; technical and artistic cooperation and financial co-productions; European origin and character of the project; principal photography; copyright regulations and joint ownership of the negative; and financial requirements.

According to the eligibility criteria for co-production support of full-length feature films, the co-producing partners should be aware of the following regulations when agreeing upon international film co-productions and entering into co-production agreements: *First*, Eurimages supports feature films of a minimum length of 70 minutes, intended for cinema release. Co-productions must be between at least two independent producers, established in different member states of the Fund. Further, co-productions must comply with the legislation of the countries concerned, the bilateral treaties in force between the co-producing countries or, where

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<sup>18</sup> Regulations in effect from January 1, 2011.

applicable, with the European Convention on Cinematographic Co-production. (Chapter 1.1. of the Regulations) *Second*, regarding eligible producers, financial support may only be awarded to European natural or legal persons governed by the legislation of one of the Fund's member states, regulated in more detail in Chapter 1.2. of the Regulations.

*Third*, regarding the co-production structure, the participation of the majority co-producer must not exceed 70% of the total co-production budget and the participation of each minority co-producer must not be lower than 10%. In the case of a bilateral co-production, the participation of the majority co-producer must not exceed 80% of the total co-production budget and the participation of the minority co-producer must not be lower than 20%. However, in the case of bilateral co-productions with a budget superior to five million euros, the participation of the majority co-producer must not exceed 90% of the total production budget. Further, a duly signed co-production agreement, or at least a signed 'deal memo' containing essential contractual provisions, is required. (Chapter 1.3. of the Regulations) As defined by Cones (1992:127), a 'deal memo' is "a shortened version of a contract, i.e. a memorandum of the minimum negotiated terms between contracting parties". Such preliminary agreement was also defined in Chapter 2.3.2.2. relating to contract law.

*Fourth*, according to Chapter 1.4. of the Regulations, co-producers from non-member states of the Fund may participate in the co-production provided that their combined co-production percentage does not exceed 30% of the total co-production budget. *Fifth*, projects must display artistic and/or technical cooperation between at least two co-producers established in different member states of the Fund; regulated in more detail in Chapter 1.5. of the Regulations. *Sixth*, co-production must be European, the European character assessed on the basis of the points system included in the European Convention on Cinematographic Co-production (Chapter 1.6. of the Regulations). *Seventh*, the conditions for the start of principal photography are regulated in Chapter 1.7. of the Regulations. *Eighth*, co-productions must comply with the copyright regulations in force in the European co-producing countries, and the negative must be jointly owned by all co-producers (Chapter 1.8. of the Regulations). *Finally*, Chapter 1.9. of the Regulations defines the financial requirements for co-productions, including the requirement of at least 50% of the financing in each of the co-producing countries to be confirmed by formal documentation.

In addition to the specific eligibility criteria of the Regulations, the repayment provision, Chapter 7 of the Regulations, should also be taken into account when entering into a co-production agreement. The support amount is repayable, from the first euro, from each producer's net receipts at a rate equal to the percentage of the Eurimages share in the financing of the film, and each co-producer shall be proportionally responsible for repayment of the share of the support allocated to it. This may be critical when agreeing on recoupment and profit sharing. Finally, according to Chapter 8 of the Regulations, Eurimages reserves the right of modification and termination of the financial support relating to the requested documentation, changes in co-productions and the breach of the Regulations.

### The MEDIA Programme

MEDIA is the EU support program for the European audiovisual industry. MEDIA co-finances training initiatives for audiovisual industry professionals, the development of production projects as well as the promotion of European audiovisual works. The current MEDIA 2007 programme (2007-2013) is the fourth multi-annual program divided into different action lines. The MEDIA programme provides funding for independent European producers of audiovisual projects with a European dimension.

Project-development funding is designed to meet the needs of different types of production companies, i.e. funding may be applied to the development of single projects, slate funding and interactive works. The eligibility criteria are set by the Guidelines on the support for the development of single projects and the Guidelines on the support for the development of a slate of projects<sup>19</sup>. The eligibility criteria relate to the eligibility of applicants, countries, activities, and proposals regulated in Chapter 5 of the Guidelines.

Further, i2i funding is designed to facilitate access to financing from banks and other financial institutions by subsidizing part of the cost of the guarantees required by these institutions, and/or part of the financing itself. i2i covers insurance, completion guarantee, or financing costs. The

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<sup>19</sup> Decision No 1718/2006/EC, Official Journal of the EU 2007/C 204/05, the most recent (by December 31, 2010) Call for Proposals EACEA 25/2010.

eligibility criteria are set by the Guidelines on i2i funding<sup>20</sup>. The eligibility criteria relate to the eligibility of applicants, countries, actions and applications (Chapter 5 of the Guidelines), but no specific regulations that especially relate to the international film co-productions are noted when agreeing on the co-production agreement.

### Nordisk Film & TV Fond

Since 1990, Nordisk Film & TV Fond has promoted film and TV productions of high quality in the five Nordic countries (Denmark, Finland, Iceland, Norway, and Sweden), by providing financing support for project development and production of feature films, TV-fiction/series, and creative documentaries. The conditions for support programs are regulated by the Guidelines set by Nordisk Film & TV Fond<sup>21</sup> including (1) general conditions on application evaluation, types of and criteria for support, reimbursement and breach of contract, and (2) specific conditions on support for different purposes.

Regarding international film co-productions in particular, there are conditions for the granting of support for the production of feature films that are required to be taken into account. According to such conditions, national base funding must be confirmed, and a distribution guarantee for cinema exhibition must be signed for a minimum of two Nordic countries and a distribution contract must be signed with a minimum of one of the TV Partners of the Fund (or for a minimum of one Nordic country if a distribution contract is signed by a minimum of two of the TV Partners of the Fund) (Chapter 7.1. of the Guidelines). Moreover, according to the conditions on reimbursement, the Fund supports project development and production by way of loans that are repayable, the Fund being entitled to a share of the producer's world wide receipts, regulated in more detail in Chapter 4 of the Guidelines.

### The Finnish Film Foundation

The Finnish Film Foundation is an independent foundation supervised by the Ministry of Education and Culture, and the support granted by the Foundation is based on the Film Promotion Act (28/2000). The Finnish Film Foundation grants film production support, exhibition and

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<sup>20</sup> Decision No 1718/2006/EC, Official Journal of the EU 2007/C 277/08, the most recent (by December 31, 2010) Call for Proposals EACEA 27/2010.

<sup>21</sup> Guidelines in effect from January 2011.

distribution support, and support for international activities in accordance with the Support Guidelines. The production companies must comply with all the Support Guidelines, but for the purposes of this study those guidelines especially relating to international film co-productions are presented here.

*First*, according to the Guidelines for film production support<sup>22</sup>, a production company holding the rights to a film in Finland can be granted support whether in the form of development support, advance support for production, marketing and distribution support, or post-release support for production (Chapter 2 of the Guidelines). *Second*, when advance support is applied for the Finnish part of international co-productions, the applicant must in addition to the required documentation also deliver to the Foundation the following documents: a cooperation contract or deal memo of all the production parties, a detailed budget, a financing plan and a production plan for the Finnish producer's share of the production, and a detailed budget and a financing plan for the whole production (Chapter 2, paragraph 2.3. of the Guidelines). *Third*, when support has been granted to the Finnish contribution to an international co-production, the applicant must in addition to the other required documentation also deliver to the Foundation a cooperation contract between all co-producers and a budget detailed for each country (Chapter 3, paragraph 3.2. of the Guidelines). *Finally*, the Guidelines also include a provision identifying the factors that influence the provisional support decision, however, this guideline that regulates international co-production does not specifically relate to the co-production agreements (Chapter 3, paragraph 3.1. of the Guidelines).

In addition to the specific guidelines regulating international co-productions mentioned above, it is worth noting Chapter 7 of the Guidelines on cancellation of the support agreement and recovery of support e.g. if the production is not completed in the manner and schedule outlined in the support agreement, or if the recipient has failed to comply with the Support Guidelines, the terms of the support agreement, or any other related obligation, or through his actions otherwise jeopardized the completion of the film.

#### Other Financiers and Cooperating Partners

As stated above, each country has its own national funding programs, foundations, institutes and other organizations. The Finnish Film

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<sup>22</sup> Guidelines in effect from January 1, 2009.



Foundation was presented above, but there are also other possible financiers or other cooperating partners that all have their own rules and regulations on national and international film productions. One of these financiers in Finland has been the POEM Foundation, the Northern Film and Media Foundation, which is an audiovisual production resource centre. The POEM Foundation has provided grants and interest-free loans and/or investment financing for film productions and has own criteria for awarding funding, when applicable.

In addition to the national foundations, television channels also finance film productions by pre-buying television rights of the film to be produced, which is also the case regarding international film co-productions. The co-producing partners may pre-sell television rights of the film within different territories, and therefore, television channels may also set their own regulations on international film co-productions to be taken into account by the co-producing parties when entering into a co-production agreement. This is also the case for film distributors which may pre-finance international co-productions and set their own regulations and guidelines as condition for such pre-financing and cooperation. Finally, it is noteworthy that the list of cooperating partners presented above is definitely not exhaustive, since any cooperating partner relating to the international film co-production may naturally set different rules as condition for its cooperation, and thus have an influence on international film co-production in various ways.

#### *2.3.2.4. Summary of the Key Legal Regulation*

Regarding the legal regulation relating to international film co-productions from the Finnish film industry perspective, Table 2 specifies such relevant legal regulation. Finland is a member state of three different international conventions on international film co-productions. Furthermore, when Finnish law is applicable to the co-production agreement, some laws have an influence on international film co-productions and their co-production agreements although no specific law exists to regulate film co-productions. Finally, there may be specific contractual provisions agreed upon between the co-producing alliance partners and financiers that need to be taken into consideration as well as contractual provisions agreed upon between the co-producing alliance partners.

<p style="text-align: center;"><b>INTERNATIONAL LAW</b> - on international film co-productions -</p> <p><b>European Convention on Cinematographic Co-production</b> (European Treaty Series No. 147; entry into force: April 1, 1994)</p> <p><b>Film and Television Co-Production Agreement between Finland and Canada</b> (Treaty Series of the Statutes of Finland, 24/1999)</p> <p><b>Agreement concerning Cinematography between Finland and France</b> (Treaty Series of the Statutes of Finland, 7/1983)</p>
<p style="text-align: center;"><b>FINNISH (NATIONAL) LAW (if applicable)</b> - relating to international film co-productions -</p> <p><b>Contracts</b> – Contract law &amp; Contracts Act (228/1929)  <b>Copyrights</b> - Copyright Act (404/1961) &amp; Decree (574/1995)  <b>Applicable law &amp; jurisdiction</b> – Legal rules of private international law</p>
<p style="text-align: center;"><b>CONTRACTUAL PROVISIONS OF AGREEMENTS</b> - regulating international film co-productions -</p> <p><b>Agreements with financiers &amp; other cooperating partners</b> – Regulations set by Eurimages, the MEDIA Programme, Nordisk Film &amp; TV Fond, the Finnish Film Foundation, etc.</p> <p><b>Agreements between co-producing partners</b> – Contractual provisions agreed upon between the contracting parties</p>

**Table 2.** Legal regulation applicable to international film co-productions from the Finnish film industry perspective.

To conclude, in order to understand the network of different legal regulation the hierarchy of legal norms is discussed in Chapter 3.5. This relates to the legal research methodology.

## 2.4. Conceptual Framework and Multidisciplinary Approach of the Study

The purpose of this sub-chapter is to draw together the different issues relating and relevant to international film co-productions in order to create a conceptual framework for this study. Since this research represents a multidisciplinary approach combining international business and legal studies utilized, Figures 5a and 5b attempt to visualize such multidisciplinary nature of the research.

Figure 5a illustrates the multidisciplinary approach of this study on international film co-productions and the use of co-production agreements.

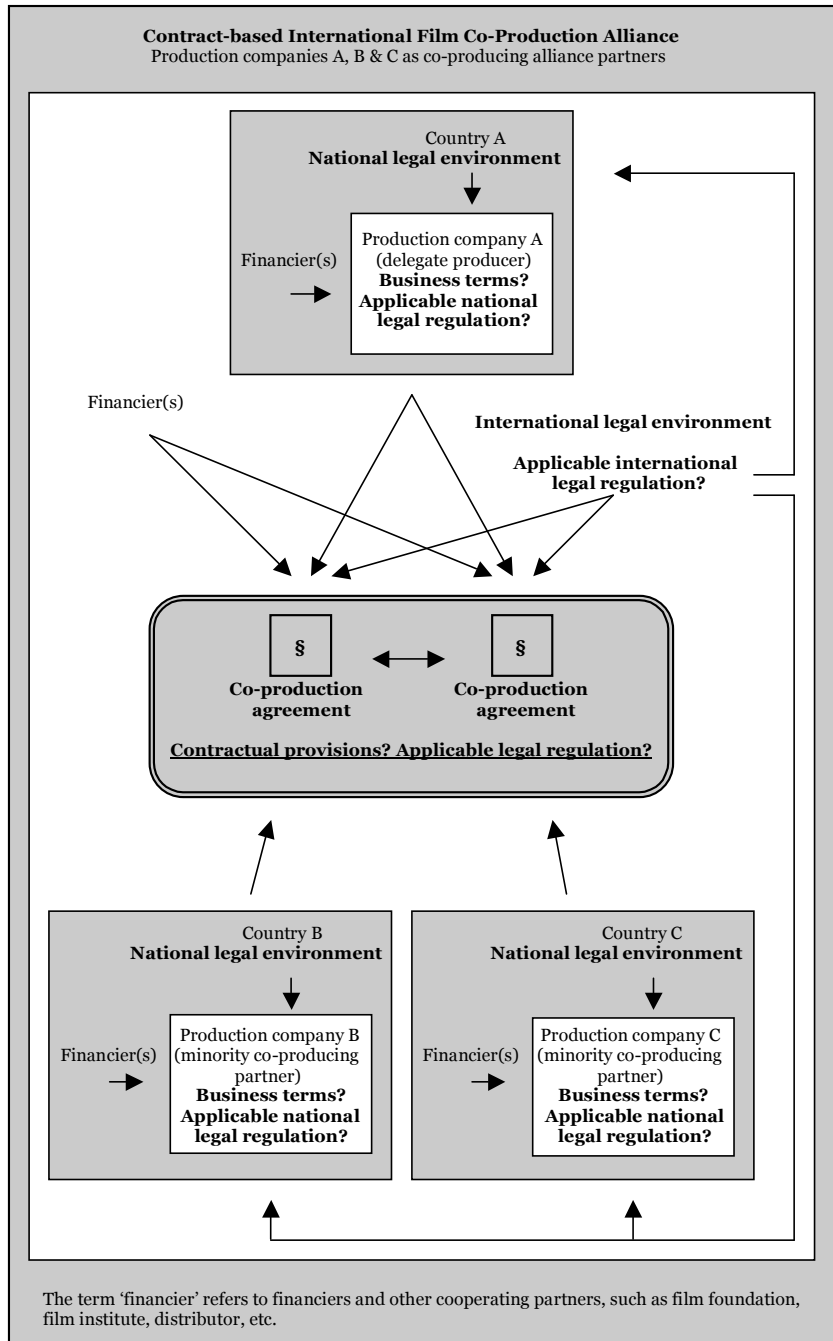
Production companies as alliance partners jointly form an international film co-production alliance. The co-producing alliance partners enter into a co-production agreement as contracting parties and agree upon contractual provisions according to which the film will be jointly co-produced. When agreeing the co-production agreement, there are several elements, business and legal, to be taken into consideration. Each alliance partner operates in its home country and has an influence on the co-production agreement and its contractual provisions, both from the business perspective as an alliance business partner as well as from the legal perspective through the applicable national legal regulation. International legal regulation has a further influence on the international film co-production through applicable international law and legal rules. Finally, each of the various cooperating partners, such as the financiers of the film, set their own rules and regulations affecting the international film co-production.

More specifically, Figure 5a illustrates a situation of several co-production agreements involved in the same international film co-production. In order to open up the meaning of the conceptual framework, *first*, production company A as a delegate producer enters into co-production agreements separately with each minority co-producing partner (production companies B and C). Each co-producing partner (delegate or minority) as a contracting party has its own needs and desires regarding business terms and thereby impact on the co-production agreement. *Second*, each production company operates in its home country within the national legal environment that has influence on the co-production agreement. *Third*, in each country represented by a co-producing partner there are financiers, such as film foundations and institutes, distributors, and other possible cooperating partners involved, and such cooperating partners have their own rules and regulations having an influence on the co-production agreement.

*Fourth*, there may be international legal regulation applicable to the international film co-production. This means that e.g. international conventions and/or the EU regulation must be applied to the co-production agreements. It is noteworthy that the international legal environment may have influence over international film co-productions in two different ways: (a) the mandatory international legal regulation has an influence on its member states, since such regulation must be adapted to the laws of such member states, or (b) the dispositive international legal regulation may have an influence on international film co-productions when co-producing partners agree on applying of dispositive international legal regulation, or the dispositive international legal regulation shall be applied since the co-

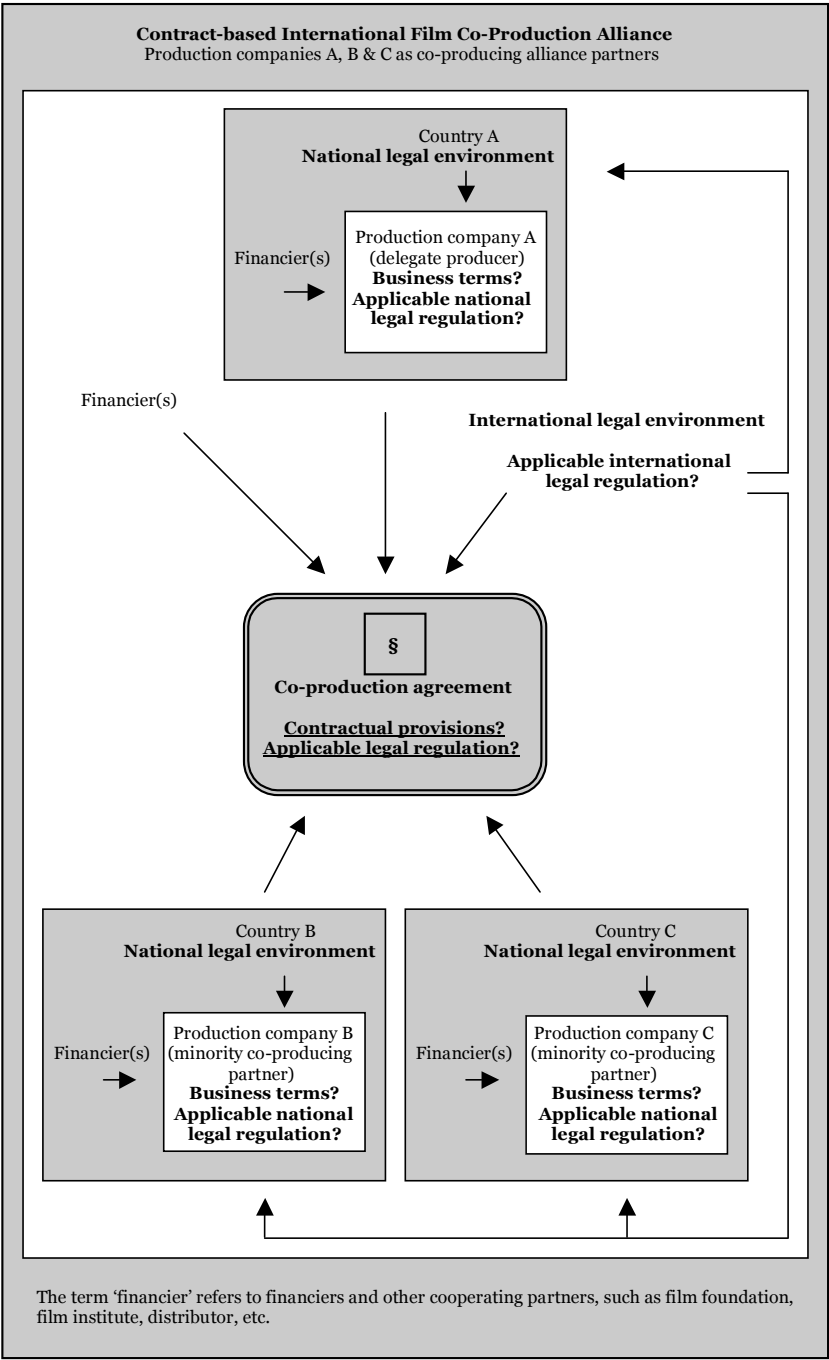
producing partners have not agreed otherwise. The difference between mandatory and dispositive legal regulation as well as the hierarchy of legal norms is further discussed in Chapter 3.5. which addresses the legal research methodology. *Fifth*, there may also be financiers, distributors and other possible cooperating partners internationally involved in international film co-production leading to the fact that their rules and regulations must be taken into account when agreeing on the co-production agreements. *Finally*, co-producing agreements have an influence on each other, since there must not be any inconsistencies between them.

It is further noteworthy that the positioning of the co-producing partners (one above, two below) in the framework does not have any particular meaning, it only shows that there is one delegate producer and the other partners are minority co-producing partners, and the delegate producer enters into a co-production agreement separately with each minority co-producing partner in the case of several co-production agreements. This study is not carried out from any specific perspective regarding the co-producing partners. In other words, this study does not examine the research topic from any particular co-producing partner's (delegate or minority) perspective over another. Nevertheless, based on the conceptual framework created for this study, it is inevitably a great challenge to manage co-production agreements from both business and legal perspectives, and since such agreements cover a variety of different elements that need to be dealt with, a contract-based international film co-production alliance may indeed be considered to be a challenge for company management in terms of the design of a co-production agreement for the international film co-production.



**Figure 5a.** Conceptual framework for multidisciplinary study on international film co-production alliances; the case of several co-production agreements.

As discussed in Chapter 2.2.1.2, there may also be only one co-production agreement entered into by and between all the co-producing partners, as presented in Figure 5b.



**Figure 5b.** An alternative conceptual framework for multidisciplinary study on international film co-production alliances; the case of one single co-production agreement.

Figure 5b, illustrates an alternative situation of an international film co-production alliance, wherein the co-producing partners sign only one co-production agreement involving all the co-producing partners. The number of the co-producing partners is the same as in Figure 5a. The only difference from the previous framework is that all the different elements specified above in relation to Figure 5a must be taken into consideration while agreeing only one co-production agreement that is entered into by and between all the co-producing partners.

### 3. RESEARCH METHODOLOGY

This *third* chapter of the doctoral thesis presents the methodological choices selected in the empirical part of this research and applied to the empirical data collection. The research design and the case study setting are first defined. This is followed by a discussion on interviewing as a qualitative research method, taking into consideration the challenges relating to the analysis of the empirical data in this study in order to produce credible qualitative research. Finally, based on the multidisciplinary approach, the legal research methodology perspective relating to this study is presented.

#### 3.1. Research Design and the Case Study Setting

As argued by Yin (2009), a research design is the logic that links the data to be collected and conclusions to be drawn to the research questions of the study. In order to achieve the best possible results for any research, the choice of methodology is rather critical. As argued by Silverman (2006), a methodology refers to the choices researchers make about cases to study, methods of data gathering, forms of data analysis, etc. in planning and executing a research study. Accordingly, the methodology defines how researchers go about studying any phenomenon. Methods are considered to be specific research techniques, including quantitative techniques such as statistical correlations, as well as techniques such as observation, interviewing, and audio recording. (Silverman, 2006)

This research follows a *case study method*. As stated by Ghauri (2004), a case study can be both quantitative and qualitative. He further argues that a case study is considered to be a useful method when the area of research is relatively less known, and case studies have the potential to deepen our understanding of the research phenomenon (Ghauri 2004). In general, as argued by Yin (2009), case studies are a preferred approach when "how" or "why" questions are being posed, and the focus is on a contemporary phenomenon within a real-life context over which the researcher has little or no control. Based on the characteristics of the research area, such arguments support the choice of the case study method as appropriate for this study.

According to Ghauri (2004), when selecting cases it is the research problem and the research objectives that influence the number and choice



of cases to be studied. There are single-case studies as well as comparative or multiple-case studies. One element affecting the number and choice of cases is confidentiality, which may be a rather crucial element relating to the use of a case study method. In a multiple-case study, where organizations are cases, even if the firm's name and certain information are disguised readers may identify the firm (Daniels & Cannice, 2004). The preliminary plan for this study was to select some international film co-productions by Finnish production companies as cases in order to carry out a multiple-case study. However, since the Finnish film industry is rather small, the managers of the Finnish production companies refused to provide the author of this study with certain information they deemed to be confidential, including any detailed data on their international business operations as well as the actual co-production agreements, not to mention publication of such data. Hence, the lack of this kind of data makes it impossible to carry out a successful multiple-case study. Consequently, this study was carried out as a single-case study in the business field, the Finnish film industry as the case.

Yin (2009) has identified rationale for single-case designs. One rationale relating to this study is the revelatory nature of the case study. This exists when we can observe and study a phenomenon that has previously been inaccessible and which can provide useful insight (Yin, 2009; Ghauri & Gronhaug, 2005). Since a single-case design has been considered appropriate when the case study is exploratory and of revelatory nature (Yin, 2009; Ghauri & Gronhaug, 2005), a *single-case study method* may be considered very useful and therefore deemed applicable to this study.

The film industry was selected as the research context, thereby providing an interesting research area for multidisciplinary studying on international film co-production alliances based on co-production agreements. However, it is noteworthy that the film industry is not the only industry and business field where a multidisciplinary study of alliance contracting combining business and legal studies can be considered valuable. Obviously, there are also a variety of international alliances based on alliance contracts within the different business areas, and as the literature review part of this study has shown, the research area of alliance contracting has been recognized as important by several researchers (see Chapters 2.1. and 2.2.). As one of several interesting examples, universities actively cooperate internationally worldwide and such international cooperation is often based on long-term partnerships and contracting, not just on project-based international cooperation. Nevertheless, this study focuses on the unique and rather

unexamined research area of the film industry and contracting in international film co-production alliances, which hopefully inspires further multidisciplinary studying on the interesting research area of alliance contracting.

In addition, this research follows a *single-case holistic case study design*. The same single-case study may involve more than one unit of analysis (a single-case embedded case study design), while attention is also given to subunits (Yin, 2009). Although the empirical data is collected from the Finnish film industry, and more specifically by interviewing producers representing Finnish film production companies, this study aims at providing more of a holistic approach to the research area. This study is considered to represent a holistic case study design, since the objective of this multidisciplinary study is to contribute to the understanding of international alliances based on and regulated by alliance contracts.

Finally, as pointed out by Ghauri (2004), triangulation, referring to the collection of data through different methods or even different kind of data on the same phenomenon, is one of the defining features of a case study. Case studies may involve data collection through multiple sources of evidence and the applicable sources are different for each study. In this study these sources of evidence are personal interviews as primary data, supported by secondary data of the film industry that is publicly available and the personal work experience of the author of the study.

The following sub-chapter focuses on the discussion of interviews as qualitative research method as the primary empirical data source for this study.

### **3.2. Interviews as Qualitative Research Method**

The previous sub-chapter defined this research as a case study. More specifically, this research follows a *qualitative case study method*, using interviews as qualitative research method. In order to separate quantitative research from qualitative research, one of the general statements is that whereas quantitative data deals with numbers, qualitative data deals with meanings (Dey, 1993). Moreover, four different major methods used by qualitative researchers have been identified: observation, analyzing texts and documents, interviews, and recording and transcribing (Silverman, 2006).

Interviews are commonly used in both quantitative and qualitative methodologies. It has been said that interviewing is the most widely applied technique for conducting systematic social inquiry (Holstein & Gubrium, 1997; Eskola & Suoranta, 1998). Atkinson and Silverman (1997) have also pointed out the special faith in the interview as the prime means of data collection. In a simple interview situation an interviewer asks an interviewee questions and this interview is considered to be interaction, where both parties affect each other (Eskola & Suoranta, 1998).

According to Daniels and Cannice (2004), there are three situations where interview-based research may be appropriate for business research in general. *First*, interview-based research studies are particularly well suited for exploratory and theory building studies, since interviews allow the researcher to discover new relationships or situations not previously conceived. Interview studies may also result in cases. *Second*, interview-based research may be optimal when there is a small population of possible respondents, and interviews may offer an opportunity to acquire a richness of information from each respondent. *Third*, interviews may allow researchers to develop a deeper rapport with informants. (Daniels & Cannice, 2004) Due to the lack of studies on the research subject of this study, data collection from the field is highly important and since the situations referred to above closely relate to this study, this strongly supports the use of interviews as a qualitative research method for the study.

Next, some issues relevant to the use of interviews are discussed with reference to this study in question.

### Interview Types

There are different types of interview; Eskola and Suoranta (1998) have identified the types of structured interview, half-structured interview, theme interview, and open interview. The interviews carried out for this study could be identified as representing an approach between half-structured and open interviews. In half-structured interview the questions are the same for all the interviewees, but there are no alternatives from which to choose to answer these questions; meaning that the interviewee may answer the questions in his/her own words (Eskola & Suoranta, 1998). Open interviews, in contrast, are reminiscent of a customary discussion. The interviewer and the interviewee discuss a given subject matter, but all

the different theme areas are not necessarily covered by and discussed with all the interviewees. (Eskola & Suoranta, 1998) In this study, on the one hand, the interviews were structured including a list of questions in order to ensure that certain issues were discussed and covered in detail during the interviews, but, on the other hand, it was important to let every interviewee answer the questions freely since the experiences of interviewees and therefore the answers may vary a lot and the interviewees may provide very unexpected information that may lead to further questions. Furthermore, distinguished from individual interview is a group interview, whereby many interviewees and perhaps interviewers are present at the same time (Eskola & Suoranta, 1998). It is the former that was primarily employed in this study.

Open-ended questions are often favored when the interview method is used (Eskola & Suoranta, 1998). According to Patton (2002), there are three basic approaches to collecting qualitative data through open-ended interviews: the informal conversational interview, the general interview guide approach, and the standardized open-ended interview. They differ in the extent to which interview questions are determined and standardized before the interview occurs (Patton, 2002). It is the general interview guide approach that was applied to this study; thereby allowing the outlining of a set of issues that are to be explored with each respondent before interviewing begins. As Patton (2002) has described, issues in the outline need not be taken in any particular order, and the actual wording of questions to elicit responses about those issues need not be determined in advance. The interview guide simply serves as a basic checklist during the interview in order to ensure that all the relevant topics are covered. The interview guide presumes that there is common information that should be obtained from each person interviewed, but no set of standardized questions are written in advance. The interviewer is therefore required to adapt both the wording and the sequence of questions to specific respondents in the context of the actual interview. (Patton, 2002)

### Interview Aspect

Interviews are traditionally analyzed as more or less accurate descriptions of experience; as reports or representations of reality. Analysis entails systematically coding, grouping or summarizing the descriptions, and providing a coherent organizing framework that encapsulates and explains aspects of the social world that respondents portray. In contrast, active

interview data can be analyzed to show the dynamic interrelatedness of the 'whats' and the 'hows'. (Holstein & Gubrium, 1997)

Holstein and Gubrium (1997) have especially pointed out that understanding how the meaning-making process unfolds in the interview is as critical as apprehending what is substantively asked and conveyed. On the one hand, the hows of interviewing refer to the interactional, narrative procedures of knowledge production, not merely to interview techniques. On the other hand, the whats pertain to the issues guiding the interview, the content of questions, and the substantive information communicated by the respondent. A dual interest in the hows and whats of meaning production goes hand in hand with an appreciation of the constitutive activeness of the interview process. (Holstein & Gubrium, 1997) These arguments strongly support the careful planning and realization of the interviewing, concerns that have been taken into consideration while planning how the interviews are carried out for this study.

### Interview Data

A number of issues have been raised about the status of interview data; Silverman (2006) has presented three different ways, relating to positivism, emotionalism and constructionism. *First*, according to positivism, interview data give us access to facts about the world. The primary issue is to generate data that are valid and reliable, independently of the research setting. The main ways to achieve this are the random selection of the interview sample and the administration of standardized questions with multiple-choice answers which can be readily tabulated. *Second*, according to emotionalism, interviewees are viewed as experiencing subjects who actively construct their social worlds. The primary issue is to generate data that give an authentic insight into people's experiences. The main ways to achieve this are unstructured, open-ended interviews usually based upon prior, in-depth participant observation. *Third*, according to constructionism, interviewers and interviewees are always actively engaged in constructing meaning. Rather than treat this as standing in the way of accurate depictions of facts or experiences, how meaning is mutually constructed becomes the researcher's topic. Because of this, research interviews are not treated as specially privileged and other interviews are treated as of equal interest, i.e. interviews are treated as topics rather than as a research resource. A particular focus is on how interviewees construct narratives of events and people and the turn-by-turn construction of meaning. (Silverman, 2006)

In the opinion of the author of this study, although this study can be considered to represent a positivist perspective with references to objectivity, triangulation, and other related considerations, the study also slightly relates to emotionalism and constructionism regarding interview data. The random selection of the interview sample, a characteristic of positivism, would be supported although cannot be directly applied since all the production companies available were selected. Further, standardized questions with multiple-choice answers were not considered to be useful for this study and open-ended questions were favored as discussed above. Therefore, this study can be considered to be related to emotionalism on the basis of the interest in 'authentic' understanding of the experiences of the interviewees, and to constructionism on the basis of the desire, through interviews, to construct meaning.

### Interview Questions

A number of decisions must be made in planning an interview, whether the interview takes place spontaneously in the field or is carefully prepared as a standardized open-ended instrument. The researcher must decide what questions to ask, how to sequence the questions, how much detail to solicit, how long to make the interview, and how to word the actual questions. (Patton, 2002) Patton (2002) identifies six kinds of questions that may be asked of people: Experience/behavior questions about what a person does or has done; opinion/values questions aiming at understanding the cognitive and interpretive processes of people; feeling questions aiming at understanding the emotional responses of people to their experiences and thoughts; knowledge questions to find out what factual information the respondent has; sensory questions about what is seen, heard, touched, tasted and smelled; and background/demographic questions identifying characteristics of the person being interviewed.

The questions used for this study are experience/behavior, opinion/values, and knowledge questions. Moreover, a background/demographic question has been used to obtain relevant data relating to the international business operations of the interviewees. The interview questions employed in this study are presented as Appendix 1.

### Subjectivity versus Objectivity

There are different opinions referring to the subjectivity of both the interviewer and the interviewee. It is a fact that there is always an image of

the research subject involved behind the persons participating in the interview, and it is rather difficult to know how much subjectivity there is behind the answers of an interview respondent (Holstein & Gubrium, 1997). As suggested by Kirk and Miller (1986), from a traditional point of view, the objectivity or truth of interview responses might be assessed in terms of reliability. The question of how objective the received information is and should be is rather difficult to answer. Converse and Schuman (1974) have pointed out the meaning of learning the interviewer role. In their opinion, interviews are conversations where meanings are not only conveyed, but cooperatively built up, received, interpreted, and recorded by the interviewer (Converse & Schuman, 1974).

Moreover, Patton (2002) has referred to the term of neutrality and has argued that neutrality means that a person being interviewed can tell the researcher anything without engendering either the researcher's favor or disfavor with regard to the content of the response. Furthermore, Douglas (1985) has created an approach to "creative interviewing" and pointed out the meaning of the interview questions. He has also argued that standard questions and answers touch only the surface of experience, and accordingly, has aimed more deeply by creatively getting to know the real subject behind the respondent (Douglas, 1985). Douglas (1985) has supported the view that interviewer aims to establish a climate for mutual disclosure while interviewing and has reminded that continual self-analysis on the part of the interviewer is necessary.

The question of subjectivity and neutrality also applies to this study, since the author of the study works within the business field and her customers are among the interviewees. This aspect of objectivity may also be considered critical in this study based on the fact that the author has worked with both business and legal issues relevant to this study for some time, and has work experience on such issues. Therefore, this could easily have an influence on the empirical study, and in order to be able to achieve the most valuable information and to make the right conclusions, it has been necessary for the author to concentrate on taking an objective and neutral role in interview sessions. On the other hand, the work experience of the author has hopefully eliminated the possibilities of misunderstandings, since the author has been familiar with the research subject when carrying out the interviews.

### Active versus Passive Interviewing

The active vs. passive role of interviewing is also very interesting aspect requiring attention. Holstein and Gubrium (1997) have argued that all interviews are interactional and the interview subject is not a passive source of information. The authors also agree that an interview should be considered as an interactive situation, where both the interviewer and the interviewee have active roles and are constantly developing. This supports the position that both actors of the interview produce the meaning of the interview together and it may not be possible to standardize the interview across different subjects. (Holstein & Gubrium, 1997) For this study, understanding these arguments has guided the author of the study as an interviewer to focus on the meanings emerging during the interviewing process. In the author's opinion, it seems valuable to concentrate and be prepared for each interview in order to be able to build up an active and devoted atmosphere for the interviews.

There seems to be many possibilities to take different views relating to interviewing. According to Holstein and Gubrium (1997), in the traditional view of interviewing, the passive subject engages in a minimalist version of interpretive practice, perceiving, storing, and reporting experience when properly asked. However, the active conception of the interview invests that subject with a substantial repertoire of interpretive methods and stock of experiential materials. Much depends on the person of the interviewer, what kind of role he/she takes. An active interviewer sets the general parameters for responses, constraining as well as provoking answers that are germane to the researcher's interest. (Holstein & Gubrium, 1997)

Especially due to the open-ended questions used for this study, the author of the study has aimed at adopting an active role as an interviewer. The author believes that if she is able to create a positive atmosphere for the interview and get the interviewee to open up, she may get the best possible results. In the author's opinion, it is particularly challenging to inspire the interviewee to talk freely about different issues relating to the research area (including, probably, issues considered as confidential) that the interviewer is interested in and needs information about. On the other hand, the author believes that her background had a positive impact on the interviews, since interviewees knew that the author is already familiar with the subject, which supported the interviewees in feeling that the author is strongly interested in this particular research area as well as their opinions and



knowledge. Hopefully, this has also created a certain level of trust between the author and the interviewees.

### Cross-Cultural Interviewing

It is finally relevant to note that intercultural interactions are always subject to misunderstandings. In cross-cultural interviewing, attention should be paid to language differences and differing norms and values. The data from interviews are words, and as Patton (2002) has argued, it is tricky enough to be sure what a person means when using a common language, but words can take on a very different meaning in other cultures. There are also words and ideas which cannot be easily translated. People who regularly use the language come to know the unique cultural meaning of special terms, but they do not translate well. The same words may mean different things in different cultures. (Patton, 2002)

This point is also valuable for this study for the following reasons: *First*, the interviewees in Finland were interviewed in Finnish i.e. in their mother tongue, and the empirical research data were translated into English, which has required the author of this study to be very careful with all the wording. *Second*, a special need is to pay attention to the terms used in the interviews. As far as the interviewees are professionals, both the English and Finnish terminology of the film industry is known by the interviewees, which decreases the possibility of misunderstandings. However, the interviewees are less familiar with the legal terms and some clarifications have been necessary to avoid misleading data. In this regard, interviews were not across cultures, it is only the language differences that must have been taken into a consideration.

Having defined this research as a single-case study and discussed interviews as qualitative research method, the following sub-chapter discusses the analysis of qualitative data.

### **3.3. Analysis of Data**

Before discussing how to interpret and analyze qualitative data, it is noteworthy that the empirical data collection is presented in Chapter 4.1. in connection with the chapter on the case of the Finnish film industry.

Nevertheless, as argued by Ghauri (2004), interpreting and analyzing qualitative data is perhaps the most difficult task while doing case study research. As further stated by Holstein and Gubrium (1997), writing up findings from interview data is an analytically active enterprise. The active analyst empirically documents the meaning-making process, and the goal is to explicate how meanings, their linkages, and horizons, are constituted both in relation to, and within, the interview environment (Holstein & Gubrium, 1997). According to Schwandt (2000), knowledge of what others are doing and saying always depend upon some background or context of other meanings, beliefs, values, practices, etc., and he refers to strong and weak holism. On the one hand, strong holists argue that people always see everything through interpretation leading to a conclusion that everything in fact is constituted by interpretation. On the other hand, weak holists argue that it is neither necessary nor desirable to draw such relativistic, suspicious conclusions from the fact that knowledge of others is always dependent on a background of understanding. (Schwandt, 2000) Schwandt (2000) also reminds that understanding what others are doing or saying and transforming that knowledge into public form involves moral-political commitments. Moral issues arise from the fact that a theory of knowledge is supported by a particular view of human agency (Schwandt, 2000).

Moreover, Coffey and Atkinson (1996) have argued that it is important to recognize the variety of data types and the variety of appropriate analytic strategies that exist. The authors also believe that there are some basic principles to be adhered to, whatever particular method is adopted and they have indicated some general guidelines (Coffey & Atkinson, 1996). *First*, nobody should adopt a particular approach toward research without making well-informed decisions and choices (Coffey & Atkinson, 1996). This is especially critical in this study, since the author of the study has work experience on the subject matter, which must not have any influence on the approach towards the research. *Second*, according to Coffey and Atkinson (1996), qualitative data analysis needs to be conducted with care, the analyst should always be reflexive and critical, and decisions and actions should be documented systematically and in detail. In the opinion of the author of this study, all this is considered to be natural and self-evident while doing research. *Third*, all the interactions should lead to reflections and decisions, and at every stage of the process the various transactions and the ideas which emerge should be documented (Coffey & Atkinson, 1996). At least regarding this study, there seems not to be any difficulty to follow this guideline due to the challenge of managing many different issues relating to the study. *Fourth*, researchers should be using

data to think with and think about leading to an active and creative approach (Coffey & Atkinson, 1996). This guideline refers to the analysis of the research area from the beginning to the end of the process of doing research and was also applied to this study.

*Fifth*, it should be remembered that computer-aided qualitative data analysis software can be used to support a variety of analytic and representational tasks and the use of such software can enhance qualitative research (Coffey & Atkinson, 1996). No specific computer-aided qualitative data analysis software was used for this study. *Sixth*, Coffey and Atkinson (1996) have argued that analysis should not be separated from other features of the research process. This relates to the fourth guideline and the idea that analysis proceeds throughout the development of the qualitative research project (Coffey & Atkinson, 1996). Also, according to Richardson (2000), it is very important to understand the process character of research and see writing as a process to complete the research. This guideline is strongly supported and applied by the author of this study. *Seventh*, according to Coffey and Atkinson (1996), the importance of representation needs to be recognized. Writing and representation cannot be divorced from analysis, which makes the analysis even more challenging. *Finally*, research methods should not be confused with theories or disciplines. It is naturally important not to lose sight of more general intellectual frameworks when undertaking research and analyzing data. (Coffey & Atkinson, 1996) Both of the latter two guidelines are noted and kept in mind by the author of this study while carrying out the whole research process.

As Atkinson and Silverman (1997) have pointed out, the interview provides the researcher with a means of access to the inner world of the respondent, and personal experience as the subject matter of the interview is stressed. They have further argued that an interview is successful when the interviewer is able to get some deeper knowledge (Atkinson & Silverman, 1997). Patton (2002) has also stated that the quality of the information obtained during an interview is largely dependent on the interviewer and it is important that the researcher learns how to listen when knowledgeable people are talking. For this study, this is definitely a challenging task to manage, and it is important to be extra careful not to understand the answers of the interviewees in a manner that is different from what they really are due to the existing work experience of the author of this study. However, the author believes that as far as this fact is recognized it is possible to be neutral when interpreting the collected

empirical data and as referred to above, on the other hand, the work experience of the author has hopefully decreased misunderstandings that might result from the lack of knowledge of the business field. The author of this study supports the argument presented by Atkinson and Silverman (1997) that the interview is a reliable research instrument giving valid data on facts and attitudes.

One more issue relevant to be noted in relation to this study as well as any other is validation criteria including validity and reliability of the research, discussed in the following sub-chapter.

### **3.4. Validation Criteria – Credible Qualitative Research**

According to Miles and Huberman (1994), it is difficult to give specific criteria according to which findings of research could be evaluated; whether they are good or otherwise. The authors have further argued that the word "good" may be replaced by many possible definitions: possibly or probably true, reliable, valid, dependable, reasonable, confirmable, credible, useful, compelling, significant, empowering, etc. However, these authors have explored some practical standards that can help a researcher judge the quality of conclusions. (Miles & Huberman, 1994) The five main, somewhat overlapping, issues have been (1) objectivity/confirmability of qualitative work, (2) reliability/dependability/auditability, (3) internal validity/credibility/authenticity, (4) external validity/transferability/fittingness, and (5) utilization/application/action orientation (Miles & Huberman, 1994). Objectivity has been discussed above and the other issues are briefly discussed below, with the specific focus on this study.

#### Reliability / Dependability / Auditability

The concept of reliability relates to whether the process of the study is consistent, reasonably stable over time and across researchers and methods (Miles & Huberman, 1994). The reliability of interview is often related to quantitative methods, based on the fact that it is very important that each respondent understands the questions in the same way and that answers can be coded without the possibility of uncertainty (Silverman, 2006). This is also important in qualitative research, because it is the responsibility of the interviewer to make it clear to the interviewee what is being asked. Since the author of this study conducted all the interviews and observations herself and thus managed all the data by herself, this increases the

reliability of this study. Moreover, the researcher needs to pay attention to the terms being used by respondents (Patton, 2002). In this study, this reliability aspect plays a very critical role, especially relating to the legal terms. The definitions of specific terms need to be understood correctly and the interviewees need to be provided with clarification of terms when necessary in order to avoid misunderstandings and to obtain reliable data.

#### Internal Validity / Credibility / Authenticity

As argued by Silverman (2006), the issue of validity is appropriate whatever the researcher's theoretical orientation or use of quantitative or qualitative data. The question is truth value, whether the findings of a study make sense (Miles & Huberman, 1994). As Ghauri (2004) has argued, authenticity is often the issue in qualitative research rather than reliability, and Lincoln and Guba (2000) have also identified validity as authenticity. Silverman (2006) has further argued that the aim is usually to gather an authentic understanding of people's experiences and it is believed that open-ended questions are the most effective route towards this end. Hopefully the use of open-ended questions and the awareness of the significance of this validity element also increase the authenticity of this research.

Ghauri (2004) has argued that data analysis and collection should be closely interconnected during the life cycle of the case study in order to increase authenticity. According to Miles and Huberman (1994), interweaving data collection and data analysis from the first interview/case is the best policy. As supported by Ghauri (2004), preferably, a second case study should not be started unless the data collected through the first has been analyzed. In this study, this suggested procedure has been followed regarding the interviews, since each interview was carried out and analyzed before the one that followed.

#### External Validity / Transferability / Fittingness

This issue refers to the fact that the researcher needs to know whether the conclusions of a study have any larger importance, whether the conclusions are transferable to other contexts, and how far they can be "generalized" (Miles & Huberman, 1994). As stated by Ghauri (2004), external validity deals with the problem of knowing whether a study's findings are generalizable beyond the immediate case study. Moreover, Firestone's (1993) review has suggested three levels of generalization: from sample to

population (less helpful for qualitative studies), analytic (theory-connected), and case-to-case transfer (see also Kennedy, 1979). Since this study focuses on the case of the Finnish film industry, this issue is very relevant particularly when making conclusions and arguing what conclusions are specific to the case industry and what could be more “generalized”.

#### Utilization / Application / Action Orientation

Even if a study's findings are considered to be valid and transferable, Miles and Huberman (1994) have referred to a need to know what the study does for its participants, both researchers and researched, and for its consumers. The authors have further reminded that there are questions of ethics, who benefits from a qualitative study and who may be harmed (Miles & Huberman, 1994). Utilization is a special interest when carrying out this study in order to be able to provide the business management of the Finnish film industry with relevant data on the subject matter, thereby hopefully supporting the involvement of the Finnish film production companies in international film co-productions and increasing understanding of the management of co-production agreements.

After having discussed and presented the research methodology of this international business research, the following sub-chapter concludes this methodology chapter by presenting the legal research methodology.

### **3.5. Legal Research Methodology**

In addition to the international business research methodology, the legal perspective with regard to research methodology is also relevant for this multidisciplinary study. The legal regulation having influence on international film co-productions forms the legal research part of this study. This has been presented and discussed above in Chapter 2.3.

In order to reflect the significance of international and national law and their influence on individual agreements, it is important to understand the hierarchy of legal norms. In order to understand the relationship between different legal norms applicable to international business cooperation (where they exist), the following table, Table 3, illustrates the hierarchy of different legal norms.

### **(A) Binding Legal Rules**

Binding Written Legal Rules – mandatory & dispositive norms\*

- Treaties and Conventions (including those of the EU)
- Law of the EU – Regulations & Directives\*\*
- National laws; acts, degrees
- Judicial decisions – between the contracting parties
- Terms and conditions of contracts\*\*\*

Binding “Unwritten” Legal Rules

- International custom
- General principles of law
- Terms and conditions of contracts\*\*\*

### **(B) Non-binding Written Legal Rules**

“Higher” value

- Acts of international organizations, e.g. Model Laws, Regulatory frameworks, other than treaties
- Judicial decisions – previous decisions
- Law of the EU, e.g. Decisions, Opinions & Recommendations

“Lower” value

- Writings, academic treatises and research publications
- Teachings

\* Mandatory norms must be applied as such and dispositive norms are applied if the contracting parties have not made any deviating decisions.

\*\* Directives are binding in the result to be achieved, although the form and the method of their implementation is left to the national authorities.

\*\*\* In addition to the sources of law, when a contract has been legally and validly entered into, it becomes binding and the contracting parties are obliged to observe the terms and conditions of the contract.

**Table 3.** Modified hierarchy of legal norms presented by Naarajärvi and Koivisto (2002).

As presented in Table 3, legal regulation can be divided into binding and non-binding legal norms of which the binding ones must be applied. It is further important to distinguish mandatory and dispositive norms. As discussed above, the contracting parties must comply with the mandatory norms, a contractual provision contrary to a mandatory norm is void and the mandatory norm is applied instead. On the other hand, the contracting parties are not obliged to comply with dispositive norms since such norms are only applied if the parties have not otherwise agreed upon and included deviating contractual provisions in their contract. (Hemmo, 2003)

In this study, the existing laws, rules and regulations relating to international film co-productions have been examined in order to understand the various legal regulation to be taken into consideration when entering into a co-production agreement. Moreover, this study has been carried out and legal regulation has been examined from the Finnish film

industry perspective. This further means that the legal regulation has been studied from the Finnish law perspective. Finally, Table 3 on the hierarchy of legal norms provides an understanding both of the variety of different legal norms in existence as well as the different positions and reciprocal relations of such norms.



## 4. CASE OF THE FINNISH FILM INDUSTRY

After having discussed the research methodology chosen for this study, this *fourth* chapter of the doctoral thesis focuses on the empirical part of the research, i.e. the Finnish film industry as the case. This chapter presents how the empirical data were collected in concrete terms. Thereafter, the collected empirical data are discussed and analyzed leading to the presentation of some key findings and conclusions from the research.

### 4.1. Empirical Data Collection

This chapter on empirical data collection first presents the Finnish film industry with some key characteristics and statistical numbers. How the empirical data were collected through qualitative interviews based on the research methodology defined in Chapter 3 is further discussed, and the applicability of the conceptual framework created for this study is reflected by presenting a concrete case of an international film co-production as an example.

#### 4.1.1. The Finnish Film Industry

As discussed in Chapter 3.1, this research is carried out as a single case study in the business field, the Finnish film industry as the case. In general, the film industry in Finland is rather small due to the small market area and limited support funds. According to the Ministry of Education and Culture, there are over 100 production companies in Finland, but only approximately 25 of these are considered to be professional businesses with regard to the production of films<sup>23</sup>.

During the years 2000-2009 a total of 147 Finnish feature films were released in Finland, accordingly, approximately 14-15 long feature films each year<sup>24</sup>. Feature film production without public production support is very exceptional in Finland<sup>25</sup>, and therefore, the feature film production has been highly dependent on the public support system.

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<sup>23</sup> The policies of the audiovisual politics (“Audiovisuaalisen politiikan linjat”), 2005:8.

<sup>24</sup> Facts & Figures 2009 of the Finnish Film Foundation.

<sup>25</sup> The policies of the audiovisual politics, *op.cit.*

In Finland, during the years 2003-2007 the numbers of 100% national feature films produced were the following: eleven in 2003, ten in 2004, eight in 2005, eleven in 2006 and ten in 2007. Regarding international film co-productions, during the five years 2005-2009, a total of 43 feature fiction films were produced by a Finnish production company as a majority co-producing partner (21 films) or as a minority co-producing partner (22 films).<sup>26</sup>

#### **4.1.2. Qualitative Interviews**

The empirical data of this study consist of qualitative interviews of ten producers representing Finnish production companies having been involved in international film co-productions of feature films. With the exception of two production companies where the producer of one company has not been available for interview and the producer of the other company has refused to give an interview this represents the full number of production companies. Noteworthy is that some Finnish production companies having been involved in international film co-productions have terminated their business operations and interviews regarding their international film co-productions could not been carried out. The interviewed producers and production companies are presented as Appendix 2 which also includes data on international feature film co-productions of each production company, films with premieres during the years of 2000-2008.

The first preliminary interview was carried out at the beginning of 2006 followed by the revision of the theoretical perspective, research questions and objectives of this study. At the end of 2006, two other interviews were carried out followed by the finalization of the theoretical approach for the study and the revision of the literature review and legal structure in order to complete the empirical data collection. The remaining interviews were carried out around summer 2008 while also the previous interviews were supplemented when necessary. The last two interviews were carried out at the beginning and during the spring of 2009 due to the tight time schedules of the interviewed producers.

As referred to above, the interview questions are presented as Appendix 1. The Appendix is presented in both English and Finnish languages, since the interviews were carried out in Finnish, and therefore, the original interview

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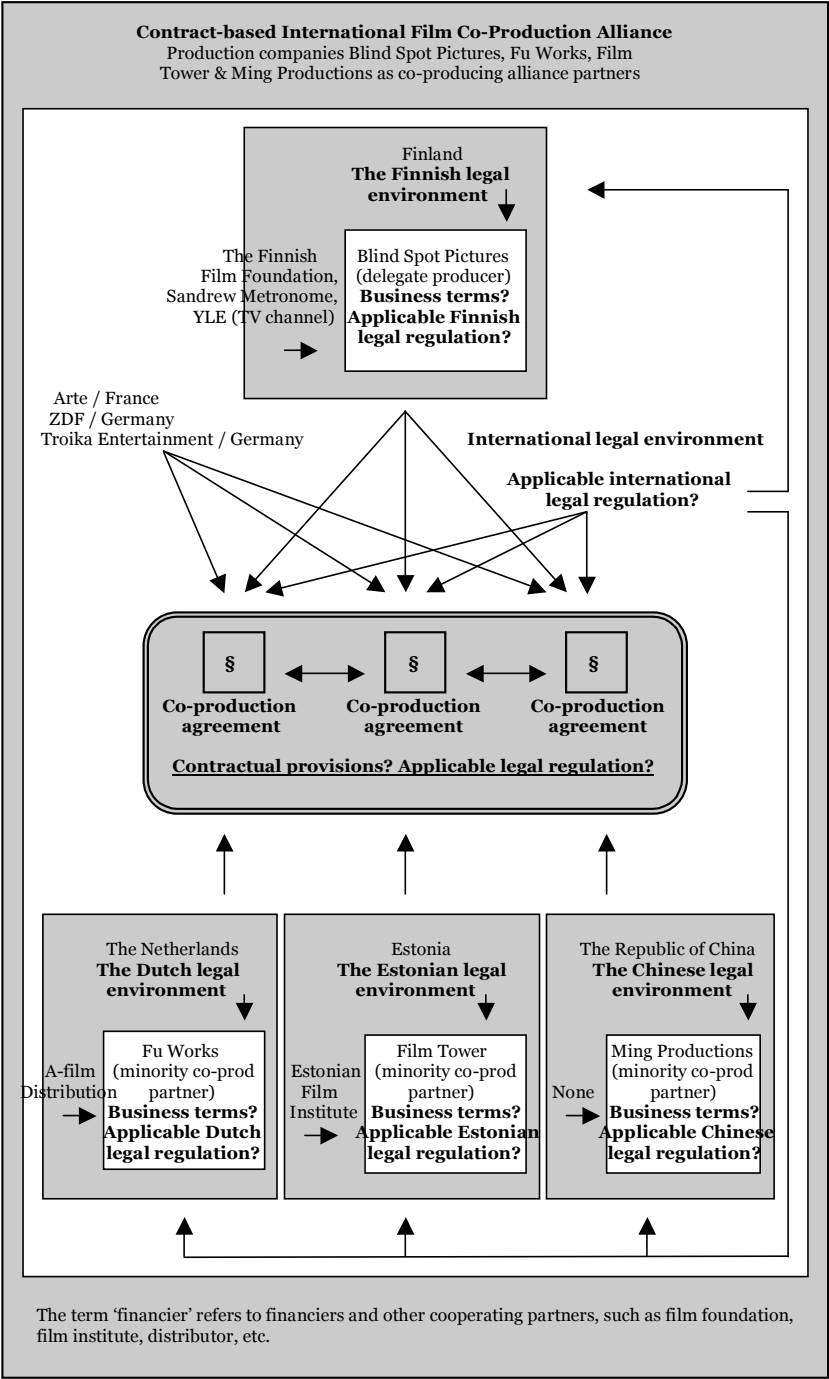
<sup>26</sup> Focus 2010, *Release of Marché du Film on World Market Trends*, 2010.

questions were created in Finnish and translated into English for the purposes of this study.

#### **4.1.3. Example Case of International Film Co-Production**

Despite the fact that this research has not been carried out as a multiple-case study, in order to give an overview of an international film co-production in concrete terms, the feature film “Jade Warrior” (premier 2006) is presented hereunder as an example case of an international film co-production.

The film “Jade Warrior” is an international film co-production between four production companies representing four different countries. Each production company has its own needs and desires for such co-production and operates in its home country influenced by the national legal regulation. Further, there are a variety of different financiers and other cooperating partners, whether representing the four countries of the production companies or any other country, also involved in the film co-production having their own rules and regulations. In the following figure, Figure 6, the film “Jade Warrior” is presented as a contract-based international film co-production alliance based on the conceptual framework of the study presented in Chapter 2.4. In this international film co-production the Finnish production company as the delegate producer has entered into a co-production agreement separately with each of the minority co-producing partners.



**Figure 6.** The film “Jade Warrior” (2006) as an example of an international film co-production.

## 4.2. Discussion and Analysis of the Empirical Data

In this chapter, the collected empirical data of this study are presented, discussed and analyzed. In order to present the empirical data in relation to the literature review, the discussion and analysis of the data is presented under the same themes as used in Chapter 2; (1) international film co-productions, (2) co-production agreements, and (3) the influence of legal regulation.

### 4.2.1. International Film Co-Productions

#### 4.2.1.1. Alliance Perspective

The Finnish producers interviewed for this study were rather unanimous in considering international film co-productions as alliances. Although at the beginning production companies may enter into international film co-productions on a project basis, the aim is, however, to cooperate at the partnership level and look for a longer term relationship with the co-producing partner(s). The objective seems to be to create a long-term persistent partnership. One interviewee argued as follows:

*“From the very beginning the basis for international film co-production should always be a joint vision on a joint film to be jointly produced and owned.”*

As argued by another interviewee, one critical element affecting, whether an international film co-production turns out to be an alliance rather than a project, is the quality of the co-producing partner. A small number of interviewees also argued that they do not believe that Finnish production companies enter into international film co-productions to make money. They further considered international film co-productions to be more or less part of the film production system, and essentially a means to enable the production of films since the financing can be raised from various countries.

Trust was also identified to play an important role by interviewees, since the longer the relationship the more trust there is among the cooperating partners, because trust comes into existence along the cooperation. As argued by one interviewee, when companies and people involved in international film co-productions get to know each other, it is desirable to continue international cooperation together, naturally however, provided that it is working. Based on the experiences of a small number of

interviewees, unfortunately, in practice, some co-producing partners have turned out to be not so good and the international cooperation has ended sooner than planned. Along with international cooperation things can just come up, the co-producing partner may not be so appropriate, cooperation is not working as wished and continued international cooperation is not recommended when not necessary. This was experienced by one interviewee. Therefore, in case there is an uncertain feeling about the cooperation in the beginning, entering into international film co-production may not be recommended, since, based on the experience of one interviewee, in such case all the fears that have been realized can multiply. The same interviewee further emphasized that international film co-productions should always be based on the objective of cooperating over the long-term basis. Furthermore, as argued by another interviewee, once a good basis for international cooperation has been created and is working well, it is also important to remember to take care of what exists.

When evaluating the time frame of international film co-productions, there is a great variety of the length of international cooperation based on the experiences of the interviewees. International cooperation relating to international film co-productions may already commence two to three years before the film shooting and when the sales are active, the international cooperation may actively continue long to the future: even to the extent of more than 20 years. At the shortest, the international cooperation commenced just before the film shooting and in practice came to an end when the film was released for theatrical distribution; altogether a period of approximately one to one and a half years. At the longest, international cooperation between co-producing partners may start early by jointly developing a film script and planning a film co-production and continue long into the future.

In each particular case, the length of international cooperation has depended a lot on what has been agreed, how independently the co-producing partners operate and how much cooperation is needed. The most active international cooperation time tends to take two to five years and thereafter the international cooperation normally continues as long as the film is at any market. Based on the experiences of the interviewees, although the active phase of international cooperation may vary greatly, it does not change the fact that a film's life span is always long and whenever a production company enters into international film co-production it makes a certain type of commitment for a long term. International cooperation may continue for several years, and as argued by one interviewee, such

cooperation should also be maintained by communicating with all the co-producing partners. At the best, one joint successful international film co-production leads to another.

The length of international cooperation plays an important role for this study relating to whether international film co-productions may be considered as alliances, or contrary to this study, should they be considered more justifiably as international projects. Although the length of international cooperation between co-producing partners may vary a lot as argued above, it should be noted that when co-producing partners own the copyrights of a film together, which is the case in most of the international film co-productions (see Chapter 2.2.2.2.), as long as the rights remain valid the international cooperation between the co-producing partners continues, and therefore, it is highly justified to agree that international film co-productions are for the long term. This further supports the fact that international film co-productions can be considered as alliances.

#### *4.2.1.2. Contracting*

More specifically on contracting in alliances, the contracting phase is considered to be at least important, if not highly important, by all the interviewees. Based on the interviews, the making of a co-production agreement should always be taken seriously. Actually, two of the interviewees particularly pointed out that in the case that the co-producing partner is not interested in contracting and considers the contracting phase as unimportant, this should be considered to be very alarming. However, the experiences on contracting vary greatly, since some of the interviewees have experienced that contracting, even when the arrangement includes a lot of negotiation and refinement, has been pleasant, while others have experienced contracting as a difficult and heavy phase. Nevertheless, as emphasized by several interviewees, through contracting it is important to find a clear understanding of the international film co-production in question. Moreover, since international film co-production may involve many companies and people, and since the people involved may change, the contracting should be taken seriously by stating the basis and rules for a long-term international film co-production alliance.

Only a small number of interviewees identified cultural differences to be a concern based on their experience. With regard to cultural differences, the Anglo-Saxon cultures have been named as being very heavy regarding contracting, since contracts are extensive and therefore the contracting

process is weightier, slower, and more expensive. In addition to the differences between cultures, the interviewees experienced differences between firms, i.e. firms have different organization cultures. As an example, for some firms specificity is very important while for others issues, such as contracting, schedules, and other plans are rather rough. However, according to the experiences of one interviewee, as already specified above, nowadays contracting seems to be considered important and meaningful regardless of the culture. If the contracting partner does not put effort into the contracting phase, it is alarming regardless of the culture, since the interviewees seem to prefer making a co-production agreement rather than not making one.

#### **4.2.2. Co-Production Agreements**

##### *4.2.2.1. Usage and Significance*

Without exception, all of their international film co-productions of the interviewees have been based on a written co-production agreement. However, there is great variety in the actual co-production agreements having been made. In this regard some international film co-productions have been based on a very long-form type of co-production agreement, and others on deal memos as the only agreement between co-producing partners. Nevertheless, at the least the main issues have been agreed upon in writing.

As referred to above, the interviewees experienced the use of a co-production agreement in international film co-production as a rather suitable way of creating international cooperation. The interviewees further argued that each co-production agreement should be carefully prepared since the agreement really establishes the basis for the international cooperation and consists of understanding of different issues. As argued by one interviewee:

*“International film co-production is during the cooperation a lot of problem settlement and therefore, the co-production agreement plays a critical role determining the basis and guidelines for such international cooperation.”*

As emphasized by many interviewees, co-production agreements are considered to be challenging to manage. It seems that the use of a co-production agreement may function properly if the agreement is comprehensive and things go smoothly. On the other hand, if things go



wrong, international film co-production is less operative and the meaning of a co-production agreement is emphasized.

Regarding the number of contracting parties included in each co-production agreement, in cases of more than two co-producing partners, the interviewees experience of both having co-production agreements covering all the co-producing partners as well as having a separate co-production agreement between a delegate producer and each minority co-producing partner. In cases of one co-production agreement including all the co-producing partners, the interviewees even have experience of a single co-production agreement between five contracting parties. However, as suggested by one interviewee, it is recommended that a delegate producer enters into a co-production agreement separately with each minority co-producing partner, since in the case of one problematic minority co-producing partner, the co-production agreement with such partner is separate from the other co-production agreements. Nevertheless, regardless of the number of co-producing partners involved in one co-production agreement, it may be considered a recommendation that each co-production agreement should include a contractual provision regulating a possible situation wherein one co-producing partner cannot fulfill its obligations and the film co-production is terminated with such co-producing partner, i.e. how this affects the whole international film co-production and the status of the other co-producing partners. Moreover, another valuable point to consider is to include in a co-production agreement a contractual provision including a statement that (a) such co-production agreement is not affected regardless of any other co-producing partners involved in the international film co-production already existing at the signature of the agreement or to be involved at any later stage, or (b) such co-production agreement is affected according to the jointly agreed terms and conditions.

An option for the use of co-production agreements could be to use a project company for international film co-production. However, it is not particularly recommended given international legal regulation, since, as previously discussed in Chapter 2.3.2.3., in order to apply international financing support (e.g. from Eurimages) co-producing partners are required to represent different countries, and if they are represented by a joint project company, they are not eligible to apply for such funding. Further, as argued by some interviewees, the use of a project company is considered to be a heavy approach to operations.

When evaluating the significance of a co-production agreement, the interviewees seem to have been pleased with the final outcomes of their co-production agreements, and they experience that the final content of each co-production agreement entered into has been consistent with what was agreed upon. One interviewee pointed out the following:

*“It is important to read carefully through the whole co-production agreement to make sure that all the essential issues are covered and the agreement does not include anything open to interpretations.”*

Further, when the reading is jointly carried out with the co-producing partners, these partners may feel more convinced that issues are understood in a similar way and confusions and uncertainties may hopefully be avoided. On the other hand, this relates to the so-called re-reading of, i.e. returning to, a co-production agreement. It is rather seldom that the interviewees as co-producing partners have returned to the co-production agreement after the signing of such agreement. Based on the interviews, co-production agreements have been re-read mostly regarding responsibilities, expenses, materials, rights and revenues. Co-production agreements may also be re-read when personnel have changed or new people are involved and they need to become familiar with the international film co-productions. It also seems to be more usual to re-read co-production agreements when the film is successful and the life span is longer.

However, this does not mean that there would not be any deviation from the content of a co-production agreement, since co-producing partners may agree terms and conditions that are different from the agreement in cases that are deemed necessary, but the co-production agreement is still considered to provide the co-producing partners with a basis for their international cooperation. Moreover, according to one interviewee, in principle it is always a bad thing if a co-producing partner must re-read the co-production agreement, since it is a sign of uncertainties and confusion. Another interviewee argued that in the perfect world a co-producing partner does not have to re-read the co-production agreement, since all the different issues are agreed upon at the outset of the international film co-production.

A valuable point made by one interviewee is that international film co-productions take place at the personal level. This means that when people change in firms during international film co-productions, it may be critical

if there is not a clear understanding of different issues relating to the cooperation, and here the value of a co-production agreement is obvious.

#### *4.2.2.2. Coverage*

The interviewees strongly support the idea that all the possible issues relating to an international film co-production should be covered by and agreed upon in a co-production agreement, and they often seem to aim to agree on the content of a co-production agreement in as detailed a manner as possible. According to one interviewee, the only exception might be a situation when co-producing partners have previously often cooperated together and a strong trust between the co-producing partners exists, in which situation a more common co-production agreement could be used instead of a very detailed one. However, as previously pointed out and discussed, each international film co-production is a unique case, which supports the significance of carefully making each co-production agreement. Based on the experiences of the interviewees, the following arguments have been presented in support of detailed agreements:

*“Each co-production agreement has been too general and should have been agreed upon in more detail.”*

*“It is better to enter into a detailed co-production agreement and deviate from it, if necessary, than to agree at the general level and be obliged to agree on the issues still open later on.”*

*“Whatever detail not agreed upon in a co-production agreement may be a mine in the future.”*

The negotiation of different contractual provisions may take time, but as argued by one interviewee, it is worth imagining the worst possible scenarios and remembering all the problems previously faced in order to create a mechanism for how to be prepared for different possible situations. A small number of interviewees also emphasized openness as a key issue for successful international cooperation, and particularly regarding a co-production agreement this means that issues of such agreement are jointly and carefully discussed and understood in a similar way. As argued by one interviewee, in the case where there is a different understanding of a specific issue between co-producing partners, it is always worth discussing openly such issue in order to find a mutual understanding, although the signing of a co-production agreement may be prolonged by such activities.

Regarding the comprehensiveness of a co-production agreement, some interviewees have experienced that the more contributions that a co-producing partner has, the more interest such partner has in the international cooperation in question and further the need to agree on the content of a co-production agreement in more detail. As further supported by one interviewee, it is not unusual that the meaning of a co-production agreement for each co-producing partner may vary depending on the amount of participation of such co-producing partner, whether the share of participation is e.g. 1%, 10% or 90%.

Based on the interview data, it may be sometimes difficult or even impossible to agree on some issues and in such cases co-producing partners may enter into a co-production agreement, but leave issues open and later make an amendment, appendix, etc. in order to finalize the co-production agreement. As pointed out by some interviewees, in case a co-production agreement is necessary or even required by potential financiers of an international film co-production, it may first also be worth using a deal memo at that point, if the negotiation on different issues remains unfinished between co-producing partners, and thus enter into a final co-production agreement later on. However, on the basis of the work experience of the author of this study, this should only be the case for issues that are impossible to agree upon at an early stage or possibly harmful if agreed upon too early. In case it is difficult to reach a mutual understanding on certain issue, it is rarely recommended that the agreement be postponed because of such issue, since it may be even more difficult to reach an agreement on the subject matter at a later stage, and thereby causing enormous problems for the international film co-production. Nevertheless, based on the work experience of the author, it is still valuable to note that a co-production agreement, as any other business contract, cannot necessarily exhaustively cover all the issues relating to an international film co-production, but as long as there has been a mutual understanding and agreement on different key elements and issues relating to the cooperation, it has often been easier to resolve unexpected situations.

#### *4.2.2.3. Drafting*

Based on the interviews, in most cases co-producing partners start drafting a co-production agreement when the main elements between the co-producing partners have been agreed upon, but this may vary greatly case by case. Based on the experiences of the interviewees, regarding the contracting phase, in the most typical case, *first*, producers tend to look for

potential co-producing partners, *second*, they negotiate the main elements considered to be important with the potential co-producing partners to find the most suitable partner for the international film co-production, and *third*, when the co-producing partner has been found and the co-producing partners have agreed on the main elements, lawyers draft and/or complete a co-production agreement in cooperation with the producing partners. An interesting argument pointed out by one interviewee is as follows:

*“There is always some sort of ‘mental decision’ to be first made to co-produce a film before going forward with contracting.”*

One interviewee further argued that the drafting of a co-production agreement can be considered always to follow and come slightly behind the development side of an international film co-production. According to another interviewee, in practice it has been usual that co-producing partners first discuss the content and financing of a film, and when the financing of the film looks probable or the financing is confirmed by the co-producing partners then the co-producing partners start drafting a co-production agreement.

Moreover, some interviewees argued that the drafting of a co-production agreement is always challenging, since there are so many issues to be agreed upon and international film co-productions vary case by case, and further, there is no standard agreement draft used. Nevertheless, according to several interviewees, the more experience they have of international film co-productions and co-production agreements, the more manageable the co-production agreements are considered to be. As supported by one interviewee, it would be particularly ideal, if a comprehensive usable agreement draft would be available, on the basis of which co-producing partners could define the nature, basis and grounds for their international film co-production that could then be case by case complemented and adjusted.

When the main elements have been agreed upon between co-producing partners, it may first be necessary to enter into a deal memo specifying such elements of an international film co-production, as possibly required by potential financiers and referred to above. Nevertheless, a signed deal memo also makes it more real for the co-producing partners to proceed in planning and carrying out their international film co-production. According to the experience of one interviewee:

*“There is considered to be a so-called silent understanding that when a deal memo has been entered into and signed by the co-producing partners, it is considered a serious and final commitment to the international cooperation and the belief is thereafter that the co-producing partners will not withdraw from the international film co-production.”*

In order to be more specific on the contracting phase, according to one interviewee, the contracting phase has taken from between one month and half a year. However, it is not out of question that it may take up to a year depending on the international film co-production in question. On the other hand, as experienced by another interviewee, the co-production agreement has even been drafted and signed in one day due to e.g. the deadline pressures set by the financiers, although, according to that interviewee, such an approach is not recommended, since in such cases there has not been time to properly agree on the working plan. Moreover, based on the interviews, the time used for contracting phase has depended on whether there has been a ready concept suggested by the delegate producer or whether the co-producing partners have worked with a concept together aiming at concluding a co-production agreement. Nevertheless, as suggested by one interviewee:

*“It would be highly recommendable that a delegate producer would always suggest a clear concept for an international film co-production, which would make it easier to make a co-production agreement and lead more easily to the actual cooperation.”*

However, sometimes this is easy to say in theory, but different from practice, since as previously argued each international film co-production varies case by case and creating a concept for an international film co-production may be very challenging at the outset of the international film co-production. Furthermore, in several cases reported by the interviewees, the actual co-production agreement has been signed just before the beginning of the shooting of the film or even later, but rarely at any earlier stage regardless of whether there has been a deal memo or not.

Most often the delegate producer seems to provide its co-producing partners with a draft of a co-production agreement. However, there have been some exceptions where the Finnish co-producing partner, as minority co-producing partner, has provided the delegate producer with a draft agreement. In one case, the film shooting was about to begin and there was no co-production agreement entered into, so the Finnish producer as the minority co-producing partner had an interest in signing a co-production

agreement to avoid unnecessary responsibilities and therefore provided the draft agreement. This may also happen if the making of a co-production agreement is delayed and the delegate producer does not possibly know what is wanted, as experienced by one interviewee. From the legal perspective, it is also recommended by the author of this study that there should always be an agreement on at least who is responsible for what before the principal photography commences. In some cases the minority co-producing partner has preferred to use its own agreement draft, which has been accepted by the delegate producer. Further, as argued by one interviewee, the Finnish production company as the delegate producer has also used a co-production agreement draft provided by a minority co-producing partner, which has been experienced to be suitable when the minority co-producing partner has been more experienced regarding international film co-productions and professional co-production agreements. Unfortunately, the interviewees have also experienced that the smaller the contribution of a co-producing partner, the less influence such co-producing partner may have on a co-production agreement. In the case of a minority co-producing partner, it may even be the case of 'take it or leave it'.

One critical aspect is presented by one interviewee who was faced by a situation where a co-production agreement was negotiated and drafted with a producer representing the co-producing partner company and having the right to sign on behalf of the company, but another person in said company actually had the final decision-making right. This is something to pay attention to at the beginning of the contracting phase, in order to ensure that the person negotiating can make the decisions which he/she actually agrees upon during the negotiation. In Finland, based on the work experience of the author of this study, the production companies have mainly been represented by those producers who actually have the final decision-making right.

#### *4.2.2.4. Key Content*

In order to study further the key content of international film co-production and co-production agreements, the interviewees were asked, first, to identify the most important elements relating to international film co-productions and second, to identify the key contractual provisions of co-production agreements.

## Key Elements of International Film Co-Productions

With regard to the most important elements of international film co-production alliances, the interviewees pointed out several different issues. When analyzing the interviews, there seems to be elements relating to international film co-productions as alliances as well as elements strongly relating to alliance partners. Therefore, the key elements are presented hereunder as alliance-related and partner-related elements.

### *Alliance-Related Elements*

*First*, as agreed by several interviewees, and as an example and stated by one interviewee:

*“Co-producing partners should have a clear understanding of the structure of an international film co-production i.e. how an international film co-production is to be carried out.”*

One interviewee referred to the same issue by arguing that it is important to find out the roles of each co-producing partner for an international film co-production, e.g. how to share different tasks. At the worst, these may never be found, since e.g. there is simply a need for financing and co-producing partners have no particular interest in international cooperation, which makes the international cooperation artificial between the co-producing partners and easily leads to a situation of compulsive and constrained international cooperation. As argued by one interviewee, there is a difference between artistic and financial responsibilities and it is important to find suitable roles for the co-producing partners, either more on the artistic or financial side, or on both sides.

*Second*, many interviewees pointed out that the cooperation between the co-producing partners should be easy and functional. For example, as argued by one interviewee:

*“The most successful international film co-productions have been based on the cooperation of partners getting along really well and enjoying what they are doing and being committed to their cooperation honestly, not just cooperating because something has to be done.”*

The interviewees further pointed out that since international film co-production is a long-term relationship, co-producing partners need to work and be able to work with each other for such a long period of time, which



further leads to the fact that people also play a critical role and may affect the fluency of the international cooperation. The significance of people is further referred to below as a partner-related element.

*Third*, several interviewees argued trust to play an important role in international film co-production alliances. The interviewees strongly believe that each international film co-production should be based on trust. *Fourth*, the interviewees also emphasized the meaning of communication. In case of the lack of communication, international cooperation in international film co-productions may be very difficult. Communication between the co-producing partners, e.g. getting the necessary information from other co-producing partners and especially from the delegate producer, should be a self-evident and natural basis for international cooperation. If the co-producing partner is not available and communication is interrupted, this may have a crucial influence on the cooperation. However, on the other hand, as pointed by one interviewee, remembering some sort of reasonableness is also recommended, since an obligation to share all the information with others, which often is an enormous amount of data, may also complicate the practice of managing international film co-productions.

*Finally*, as pointed out by a small number of interviewees, one further element considered to be critical is an actual and real interest of a co-producing partner in the story of a film, and/or the talent involved in the international film co-production. In the opinion of the author of this study, surprisingly little attention was allocated to this particular issue, which, however, may partly be explained by the fact that it is considered by the interviewees to be too obvious and self-evident to report.

#### *Partner-Related Elements*

*First*, it is highly recommended by several interviewees that co-producing partners having experience on international film co-productions are sought. The desire, knowledge and skills of a co-producing partner have been mentioned to be critical. As supported by one interviewee, the co-producing partner should have some sort of 'track record' that reflects the capability of acting as a co-producing partner. Some of the interviewees even considered that experience of international film co-productions and the management of large projects should be an implicit precondition for entering into international film co-productions with any potential co-producing partner. However, one interviewee pointed out the question, how much it is possible

to find out about the potential co-producing partner in order to be able to make the decision of whether it is worthwhile entering into international film co-production with that partner or not. As experienced by one interviewee, during one international film co-production the Finnish producer as a minority co-producing partner was aware of the unprofessional management of the co-production issues by the delegate producer in its home country, but was unable to have any influence over such management of issues.

*Second*, partly relating to the above, some interviewees argued that a co-producing partner should have a professional position at a certain level in its home country, which also increases trust. *Finally*, as referred to above, based on the experience of the interviewees, international cooperation is often personal. For example, if a producer has known someone for a long period of time, this often leads to cooperation with that person. On the other hand, if such person stops working for a company which is a co-production partner and that individual is the only person familiar with the cooperation, it may be very challenging to continue cooperation with a new person who does not know any of the background and probably has insufficient documentation to introduce himself/herself to international film co-production.

### The Key Contractual Provisions of Co-Production Agreements

After examining the key elements relating to international film co-productions, further notice is taken of the key content of co-production agreements. The key contractual provisions of co-production agreements previously identified in the literature review (Chapter 2.2.2.2) are also supported to be the key ones by the interviewees. Further, based on the interviews, there seems to be some variety in the most important elements of co-production agreements identified and listed by the interviewees. One interviewee specified them to be responsibilities, obligations, and timetable. Another emphasized ownership, sharing of financing, sharing of revenues, obligations in practice, and distribution and sales of the film. The same interviewee further reminded that rights and responsibilities should always be agreed upon very clearly. A further interviewee particularly argued the most important elements to be sharing of financing and the type of financing, the roles and contributions of each co-producing partner, territories, decision-making, and responsibilities. Finally, one interviewee argued the most critical elements to be shares/contributions, rights and

responsibilities, financing, budget overages, and decision-making (both content and business).

In a more detailed sense, the interviewees particularly identified the following: One argued the awareness of the positions of all the financiers involved in an international film co-production to be important and their rules for financing to be taken into account, which should be noted as a rather critical element affecting a co-production agreement and its content. Furthermore, a small number of interviewees pointed out the budget as the most important element involving e.g. the agreement on the amount of producer's fee for each co-producing partner. One more critical element specified to be important by one interviewee, and to be clearly agreed upon in a co-production agreement is how to deal with any possible changes of time schedules, delays, or even cancellations, and further the expenses caused by such changes.

In a more common sense, the interviewees pointed out the following: As particularly argued by a small number of interviewees, it is very critical that all the elements included in a co-production agreement are understood by each contracting partner i.e. each partner acknowledges and understands what has been agreed upon in each contractual element. Further, one interviewee argued that some sort of commensurability is important; meaning that the position of each co-producing partner should be in fair and equal relation to the others. It seems that regardless of whether all the co-producing partners are included in the same co-production agreement or whether the delegate producer has a separate co-production agreement with each of the other co-producing partners, the terms and conditions should be drafted on the same and equal basis for each co-producing partner.

In order to identify the differences of the significance of the different contractual elements of co-production agreements, all the interviewees were asked to put different contractual elements involved in a co-production agreement in order of importance. Each interviewee was asked to approach the priority listing in what order the different contractual elements are agreed upon when contracting an international film co-production. Table 4 presents the priority lists made by the interviewees (10 interviewees in random order marked from A to J) of the different contractual elements. The ranking is as follows: 1 = the most important contractual element, 2 = the second important contractual element, ... , 16 = the least important contractual element. A highly interesting aspect is to

study the differences between the most important and the least important contractual elements. In order to point out such differences, in Table 4 the five most important contractual elements identified by the interviewees are marked as bold and the five least important contractual elements identified by the interviewees are marked in italics.

Key contractual elements	The interviewed Finnish producers									
	A	B	C	D	E	F	G	H	I	J
Film/production specifications	8	6	12	12	12	<b>5</b>	14	8	7	9
Contributions of the co-producing partners	<b>2</b>	<b>2</b>	<b>1</b>	<b>2</b>	13	<b>2</b>	<b>4</b>	<b>5</b>	<b>2</b>	<b>5</b>
Production schedule	9	<b>4</b>	6	11	10	<b>4</b>	13	11	6	<b>4</b>
Budget	<b>5</b>	<b>5</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>3</b>	6	9	<b>4</b>	<b>1</b>
Financing plan & cash flow	<b>3</b>	<b>1</b>	<b>4</b>	<b>3</b>	<b>1</b>	<b>1</b>	<b>5</b>	6	<b>5</b>	<b>2</b>
Rights clearance (script, music, etc.)	<b>1</b>	10	11	7	7	6	10	<b>1</b>	<b>1</b>	<b>3</b>
Copyright of the film & secondary rights	6	13	7	6	<b>4</b>	14	<b>3</b>	<b>2</b>	8	6
Commercial exploitation & distribution of the film	7	8	8	<b>5</b>	14	9	<b>2</b>	<b>3</b>	12	7
Materials & the delivery	10	12	16	8	15	8	12	10	9	10
Profit participation/sharing, recoupment & collection of revenues	<b>4</b>	<b>3</b>	<b>2</b>	<b>1</b>	<b>2</b>	7	<b>1</b>	<b>4</b>	10	8
Insurances	13	11	15	15	6	15	15	16	11	11
Credits (on screen)	12	7	9	9	16	10	8	12	14	13
Confidentiality	15	14	10	16	<b>3</b>	16	16	15	15	14
Termination	14	9	13	13	8	11	7	13	<b>3</b>	12
Assignment of the agreement	11	15	14	14	11	13	11	14	16	15
Applicable law & dispute resolution	16	16	<b>5</b>	10	9	12	9	7	13	16

**Table 4.** The most and the least important elements of co-production agreements based on the empirical data.

When analyzing Table 4, *first*, two elements, ‘contributions of the co-producing partners’ as well as ‘financing plan and cash flow’, have been considered by the interviewees to be among the most important contractual elements according to all of the interviewees, there being only one exception. ‘Budget’ has also been strongly considered to be among the most important contractual elements supported by eight interviewees, and the contractual element of ‘profit participation/sharing, recoupment and collection of revenues’ named as the next important contractual element. Finally, ‘rights clearance’ is a further concern considered to be among the first five most important contractual elements.

*Second*, regarding the least important contractual elements relating to co-production agreements, the interviewees did not unanimously identify any contractual element as such. However, based on the empirical data, ‘confidentiality’ has been most often considered as the least important contractual element by the interviewees. ‘The assignment of the agreement’ has been named as the second least important contractual element, and

‘insurances’ as the third. Finally, ‘credits’, ‘termination’, and ‘applicable law and dispute resolution’ are all considered as the least important contractual element by five interviewees. In order to summarize, based on the empirical data, six different contractual elements can be named as the least important contractual elements.

*Third*, as a rather interesting finding, while all the other interviewees named ‘the contributions of the co-producing partners’ as one of the most important elements, one interviewee named it as one of the least important. A similar interesting finding is that one interviewee considered ‘confidentiality’ to be one of the most important contractual elements, while the other interviewees named ‘confidentiality’ as one of the least important contractual elements. Furthermore, there is also much variance regarding the contractual elements of ‘copyright of the film and secondary rights’, and ‘commercial exploitation and distribution of the film’, since some of the interviewees considered them as the most important contractual elements while some of the interviewees considered them to be the least important contractual elements.

*Fourth*, as a further interesting key difference, while carrying out the interviews, some interviewees considered the business issues to be most critical, while others considered the legal issues to be more critical at the beginning, when entering into an alliance. For the former group, the co-producing partners negotiate how they carry out their international film co-production in the first place, while for the latter, the co-producing partners are more concerned about legal issues and regulation and how such issues and regulation affect their international film co-production.

*Fifth*, the interviewees experienced the assignment of priority listing rather difficult, since the argument was that all the different contractual elements are important and must be included in each co-production agreement, therefore, it is difficult to consider some to be more critical than the others. This is understandable and is the reason why here the attention is paid to the most and least important contractual elements and the aim has not been to try to make some kind of ‘final/official’ ranking of the contractual elements. This is also supported by the fact that international film co-productions may vary case by case as well as by the experiences of the interviewees on international film co-productions. This may also explain the variety of the priority listings. However, while collecting the empirical data, an interesting finding was that those interviewees who found the priority listing less difficult, were those who had a more

structured perspective about how to approach international film co-productions. Therefore, in the opinion of the author of this study, the most interesting value of the priority listing of the contractual elements is to reflect upon which elements create the primary structure for an international film co-production.

#### *4.2.2.5. Challenging Elements, Uncertainties and Risks*

The interviewees experienced many different challenges relating to co-production agreements. In a more detailed sense, the interviewees identified the following challenges: *First*, several interviewees argued that one of the most difficult elements to be agreed upon in a co-production agreement is profit participation i.e. the sharing of revenues, since co-producing partners represent countries (or territories, as defined in co-production agreements) that are highly different from each other particularly regarding size. It is usual that each co-producing partner may manage the exploitation and distribution of a film in its home country, and it could be easily agreed that each co-producing partner may also have the right to collect revenues from its home country. However, for example, in the case that the co-producing partners represent Finland (ca. 5 M inhabitants), Sweden (ca. 8 M inhabitants) and Germany (ca. 80 M inhabitants), the revenues arising from these territories may naturally vary greatly, and the co-producing partners may need to agree on the sharing of the revenues and also find a fair and equal solution in relation to the financing of each co-producing partner.

*Second*, according to one interviewee, it is challenging to agree on the use of financing money in each co-producing country. Financiers often regulate the use of the financing money and require that such money need to be spent in the country of its origin. Therefore, co-producing partners need to make specific plans how to use the financing money in each country involved. *Third*, according to another interviewee, it is challenging to agree precisely on the sharing of tasks and responsibilities between co-producing partners in concrete terms. The objective is that all the tasks and responsibilities are clearly defined and not open to interpretations. As further pointed out by one interviewee, this also relates to the decision-making right. Different issues may arise and need to be decided during the international film co-production process, and it is critical which co-producing partner have the decision-making right and on what issues.

*Fourth*, a further challenge relating to co-production agreements argued by one interviewee is the applicable law and jurisdiction. For example, this has proved to be challenging when co-producing with a Russian co-producing partner. *Fifth*, according to one interviewee, the right of 'final cut' (i.e. the right to accept the final version of a film) is always problematic and it is difficult to find a solution that would satisfy all the co-producing partners. The same interviewee further argued that it is common that a delegate producer has the right of 'final cut', but how much minority co-producing partners may affect the final version of the film depends a lot case by case. *Sixth*, festival participation has also been experienced as a challenging element to be agreed upon between the co-producing partners. Further, as the *seventh* element, credits may cause difficulties between the co-producing partners. There are differences between countries and clearly agreeing on credits is recommended. However, it is not unusual for the co-producing partners to also agree that credits vary between the co-producing partners' countries.

*Finally*, as argued by some of the interviewees, cash flow planning as well as recoupment scheduling has proved to be challenging. Regarding cash flow planning, each co-producing partner should be able to plan the cash flow for its own financial contribution and the delegate producer is usually responsible for gathering overall cash flow schedule. If the cash flow plan is not worked out properly, i.e. there are gaps between the financing money spent for film production expenses and financing coming into the production, this may cause enormous problems for international film co-production. Regarding recoupment scheduling, it seems that there is much confusion and uncertainty regarding all the different financing schemes and practices of financiers in each co-producing country, and it is challenging to know when financial money should be recouped. In Finland, there is so called free money granted by the Finnish Film Foundation meaning that the granted money need not be repaid. This is, however, very exceptional, and therefore, it is important to understand all the repayment obligations and other regulations relating to the financing in order to avoid later surprises and further to understand better how the revenues are to be shared. As the recoupment schedule sets out the order of priority in which investors, financiers and co-producers are repaid for their loans and investments, the drafting of a recoupment schedule and taking into account each and every financier and/or other cooperating partner has proved to be a great challenge many times.

In a more common sense, according to one interviewee, the most challenging situations relating to co-production agreements have been identified to be those where one co-producing partner has demands that are not fair and equal to the other co-producing partners. As pointed out by another interviewee, fairness between co-producing partners should always be fulfilled. Moreover, one interviewee argued the biggest challenge to be managing a co-production agreement as an entirety. This perspective is also supported by another interviewee, since the whole content of a co-production agreement should be managed in order to identify clearly the entirety of the agreement and own responsibilities to avoid, or at least to be prepared/acknowledge, possible risks.

The interviewees were also asked to identify uncertainties and risks relating to co-production agreements. One interviewee argued the following:

*“The objective of the co-producing partners should always be that everything is covered and agreed upon in a co-production agreement to eliminate uncertainties in the future as well as possible.”*

Based on the experiences of the interviewees, it is recommendable that all the issues relating to international film co-production are discussed and dealt with as openly as possible, as argued above. One interviewee further supported the view that all the different scenarios should be imagined in order to avoid uncertainties and haziness later on during international film co-production. Furthermore, as pointed out by another interviewee, it is highly recommended that particularly in the case of a minority co-producing partner, the obligations and responsibilities are clearly agreed upon in the co-production agreement. There are always uncertainties and risks that cannot be covered and prepared for, and therefore, by clearly specifying the responsibilities this may help to avoid unpleasant surprises, difficulties and unreasonable risks, if any, in the future.

Based on the interviews, the uncertainties and risks most strongly identified by the interviewees seem to relate to money and financial issues. *First*, as pointed out by several interviewees, the biggest factor of uncertainty has been argued to be the uncertainty of receiving the planned financing, since normally a co-production agreement must be entered into before all the financing is secured for international film co-production. One interviewee strongly emphasized that this leads to the fact that it is highly recommended to plan a mechanism how an international film co-



production is terminated in case of the lack of financing. It is not unusual that if one financier decides not to provide the planned financing, other financiers may follow the same and the whole international film co-production may be in threat of being cancelled.

*Second*, risks relate to the use of money. Based on the experience of one interviewee, in one case the delegate producer exceeded its budget and covered the extra costs by the extra money received from a financier that, however, naturally required the share of revenues as a compensation for the financing. This may easily lead to a situation where the percentages of revenue shares are re-divided in case the co-production agreement does not prohibit this. Since this kind of situation may easily happen, it is highly recommended that in the case of a minority co-producing partner, each producer should agree in the co-production agreement that where there is an exceeded budget by the delegate producer, this must not have any influence on the shares of copyright and revenues of the minority co-producing partner.

*Finally*, a co-producing partner may have financial difficulties relating to other film co-productions or other business operations of the firm. As pointed out by a small number of interviewees, it may be the case that the co-producing partner may get into crisis of their own, or the co-producing partner may go into bankruptcy. As stated by one more interviewee, the economical stability of a co-producing partner is always a risk, whether such partner can or cannot meet the responsibilities and duties. Therefore, as recommended by one interviewee, the co-producing partners should always remember to agree in the co-production agreement that the responsibilities and duties of the other co-producing partners must remain valid although one co-producing partner may be bankrupt or otherwise in financial difficulties and unable to meet its responsibilities.

One more particular risk identified by one interviewee is that each co-producing partner should take into account any contract to be made later on e.g. on distribution and sales of a film. Such other contracts must be consistent with the co-production agreement. Therefore, if possible, each co-producing partner should pay attention to what is required by e.g. any distributor of its home country in case said co-producing partner enters into an agreement with such distributor, in order to ensure that the co-production agreement does not exclude any business opportunities of the co-producing partner. On the other hand, each co-producing partner must

not enter into a distribution agreement or any other agreement that is breaching a co-production agreement already valid and existing.

#### **4.2.3. Influence of Legal Regulation**

The most of the interviewees considered that they know and are aware of the basics of the legal regulation relating to international film co-productions. The remaining part is lawyers' responsibility. The other interviewees considered that they do not have much knowledge on legal regulation. Nevertheless, the interviewees experienced the legal regulation to have both positive and negative influences on their international film co-productions. Based on the experiences of the interviewees, legal regulation has been identified as having an influence on the ownership shares and responsibilities/obligations. An official European co-production sets some requirements for the sharing of financing and ownership of the film according to the European Convention on Cinematographic Co-production. Further, financiers have their own requirements for the usage of financing in each country involved. Such requirements may affect international film co-productions at the very fundamental level; whether it is worth of cooperating or not.

The interviewees have considered e.g. the Eurimages regulation as given and they strongly feel that it simply must be followed. The interviewees have further experienced that after once getting to know such regulation, it is then easier in the future to plan international film co-productions under the regulation. In other words, the regulation is considered to be a general rule that cannot be criticized. On the other hand, without the regulation, there may not be cooperation with some European countries that require the application of the multilateral treaties such as the European Convention. This results from the fact that national funds and film foundations require the application of international treaties.

In general, it seems that several interviewees experienced the European Convention as a means to create a suitable basis for international film co-productions in Europe. It may be even helpful, since based on the experience of one interviewee the European Convention has also provided a helpful basis for international film co-production with Russia. Other interviewees also found the European Convention to be a standardizing element for European film co-productions. However, as experienced by one interviewee, the influence has also been the opposite. For some co-producing partners the application of the European Convention may be a

condition for providing their financing and being involved in international film co-production while others may prefer that the structure of the co-production is not consistent with the European Convention.

The most difficult experiences of the interviewees relate to the restrictions set by financiers. Their unfortunate experience is that co-production agreements have been drafted and international film co-productions been structured on the basis of the requirements set by the financiers and often there is not much negotiation involved. Especially the bigger countries in Europe, such as Germany, France and the UK, regulate much, and restrict the usage of financing, although in these countries there is also more financing money involved in international film co-productions. In addition to the above-mentioned positive experiences, there are also difficult experiences that relate to Eurimages as well as international legal regulation. *First*, it is considered that Eurimages restricts the compatible co-producing partners. For example, in case a producer might have cooperation with a media house, this is not possible under the Eurimages regulation. *Second*, in case the producer would want to establish a project company, Eurimages requires the fulfillment of certain conditions, which makes it impossible to carry out international film co-production through such a project company although such an arrangement could be advantageous for the film co-production. *Third*, according to one interviewee, the idea of legal regulation seems to exist to simplify issues relating to international film co-productions, but since national practices vary, the international legal regulation may complicate things instead. The same interviewee further argued that national practices should be consistent with each other and until this takes place properly, it is perceived that legal regulation complicates more than benefits.

Finally, in order to manage all the contracting of international film co-production, one interviewee has found a valuable solution of using a so-called joint lawyer. At the beginning of an international film co-production each co-producing partner negotiates its co-production agreement by consulting their own lawyers, and thereafter, one lawyer is hired to manage the contracting of the international film co-production in accordance with the co-production agreement(s). This may save a lot of time and money.

### 4.3. Key Findings and Conclusions of the Study

The conceptual framework on international film co-production alliance presented in Chapter 2.4. was prepared based on the research questions presented in Chapter 1.3. The purpose of this sub-chapter is to draw the key findings and conclusions of the empirical part of this case study of the Finnish film industry together in order to answer the three research questions.

The *first* research question for this study was: *“How does a co-production agreement function as a basis for and regulating an international film co-production alliance?”*

Based on the empirical research, Finnish producers have experienced international film co-productions as international alliances and the use of a co-production agreement in international film co-production as a rather suitable way of creating such international cooperation. The use of a co-production agreement has also been experienced as a rather standard way of managing international film co-productions among Finnish producers and is considered to be a universal mechanism. Based on the empirical data, without any exception, international film co-productions have been based on co-production agreements. Since Finnish producers considered a clear understanding of the structure of each international film co-production and the roles of the co-producing partners to be important, a co-production agreement is considered to provide the co-producing partners with a suitable as well as important way of structuring each international film co-production. This is achieved through the design of the co-production agreement in order to take into consideration the relevant elements of each international film co-production in question.

This also supports the argument of Ariño and Reuer (2004) that contract design is an essential part of alliance structuring. Moreover, as argued by Neumann and Appelgren (2002), since every film is unique and every co-production agreement is a singular creation this also supports the significance of the design of a co-production agreement. On the other hand, such uniqueness may also be the reason why the use of a co-production agreement is experienced as functioning so well as a basis for international film co-production. Consequently, this certainly puts pressure on co-producing partners to manage the use of a co-production agreement in order to understand that everything is thought through and covered, which further increases the significance of the skills and knowledge of each co-

producing partner entering into a co-production agreement. Finnish producers emphasized the significance of the experience of international film co-productions by strongly arguing that they tend to look for co-producing partners having such experience in order to make sure that international film co-productions are properly structured, co-production agreements are properly made, and the co-producing partners share a joint understanding of how to carry out each international film co-production.

Moreover, this study has shown that the co-production agreement includes a great variety of issues that need to be dealt with and agreed upon, which leads to the fact that designing such an agreement may be a long and heavy process. This is easily considered to be an argument against the use of one comprehensive agreement as a basis for an entire international film co-production. However, at least the following three different reasons supporting the contrary view can be identified: *First*, in cases where the co-producing partners are obliged to enter into an agreement prior to when all the different issues are negotiated due to e.g. financial pressures, it seems to be highly recommendable for the co-producing partners to use a deal memo to cover at least the primary elements (i.e. the rough basis for an international film co-production) and to include a statement that the contracting parties will enter into a proper agreement later on. This may make the contracting process more manageable. *Second*, there is often a case that different contractual provisions relate to each other, and therefore, it is more recommendable from the beginning to agree on all the different relevant issues at the same time as much as possible in order to form a proper and complete structure for the entire international film co-production. *Finally*, since it may be necessary to enter into international film co-production very promptly, this supports the suitability of using a co-production agreement as a basis for an international film co-production alliance rather than project companies or other operation forms that may be considered as representing a more steady way of doing international business, but instead may represent even longer and heavier processes.

Especially from the legal perspective, a co-production agreement as a basis for and regulating an international film co-production can be supported by the fact that when using such an agreement the applicable law may be decided by the contracting parties while project companies would be strictly linked to their country of the origin. This may not make any difference, but it may give some freedom to the contracting parties to influence their international cooperation.

The second research question for this study was: *“What are the business and legal issues relating to, and having influence upon, the use of co-production agreements in international film co-productions from the Finnish film industry perspective?”*. This research question was further divided into three more specific sub-questions: (a) *“What are the key contractual elements of the international film co-productions?”*, (b) *“What is the legal regulation affecting the international film co-productions?”*, and (c) *“How does the legal regulation support or restrict international film co-productions?”*.

Based on the empirical data, in general, Finnish producers aim to agree upon the content of a co-production agreement in as detailed a manner as possible. Before specifying the key contractual elements of international film co-productions, it is noteworthy that one essential general element emphasized by Finnish producers and considered to be of importance is the consistent understanding of each contractual element between the co-producing partners.

Since a co-production agreement is considered to cover all the different issues relating to an international film co-production, such agreement includes a great number of issues that need to be agreed upon. At least based on the empirical data of the Finnish film industry, the notion that all the possible issues relating to an international film co-production are covered and agreed upon in a co-production agreement and the objective is to agree on the content of the co-production agreement as detailed as possible is strongly supported. More specifically, this study has shown that 16 key contractual elements/provisions can be identified to be characteristic of the co-production agreements. Based on the empirical data, these key contractual elements may be categorized in terms of the most important ones, and those that are important but not to the extent of the most critical ones. The five most important contractual elements have been identified to be (1) contributions of the co-producing partners, (2) financing plan and cash flow, (3) budget, (4) profit participation/sharing, recoupment and collection of revenues, and (5) rights clearance. On the other hand, the least important contractual elements are considered to be (1) confidentiality, (2) the assignment of the agreement, (3) insurances, (4) credits, (5) termination, and (6) applicable law and dispute resolution. However, based on the empirical data, a priority listing was found to be rather difficult, since all the different contractual elements were considered to be important and critical and required to be included in each co-production agreement.

As an interesting finding, primarily, it was considered more important and critical either how to carry out an international film co-production in business terms or what the legal regulation and legal issues are affecting such international film co-production. This strongly supports the importance of combining business and legal perspectives both being important in order to properly understand the use of co-production agreements in international film co-production alliances.

Regarding the legal regulation affecting international film co-productions, as this study has shown there are international law, national laws and different rules and regulations of financiers and other cooperating partners each having influence on international film co-productions. Table 2 presented in Chapter 2.3.2.4. summarizes all the legal regulation that needs to be taken into consideration when entering into international film co-productions from the Finnish film industry perspective, where Finnish law as applicable. Based on the empirical data, the legal regulation relating to international film co-productions has been experienced both positively and negatively by Finnish producers. Legal regulation has been considered as supportive by creating specific ruling for international film co-productions as some kind of standardizing element. Meanwhile, legal regulation has also been experienced as complicating opportunities to operate internationally and carry out international film co-productions.

In order to argue the compatibility of the legal regulation and international film co-productions, the use of a co-production agreement is supported by the international legal regulation and international financing organizations, since international film co-productions are mostly regulated in such a way as to involve two or more production companies representing different countries. An option for the use of a co-production agreement could be to use a project company for international film co-production, but it is not recommended in the international regulation, since, as previously discussed in Chapter 2.3.2.3., in order to apply international financing support e.g. from Eurimages, the co-producing partners must represent different countries, and if they are represented by a joint project company, they are not eligible for such funding.

Legal regulation has also had an influence especially on ownership shares and responsibilities/obligations. An official European co-production requires certain sharing of financing and ownership of a film according to the European Convention on Cinematographic Co-production. Moreover,

the financiers have their own requirements for usage of the financing in each country involved. This may affect international film co-productions at the very fundamental level, whether it is worth of cooperating or not. However, in general, Finnish producers have experienced international legal regulation, e.g. the European Convention, as a means to create a suitable basis for international film co-productions in Europe. Finnish producers also experience the European Convention to be a standardizing element for the European film co-productions. However, based on empirical research, international legal regulation has also restricted international film co-productions through eligibility criteria and international legal regulation has also been considered rather inflexible. Nevertheless, the most difficult experiences of Finnish producers relate to the restrictions set by the financiers. Their unfortunate experience is that international film co-productions have been structured and co-production agreements drafted on the basis of the requirements set by the financiers without much of negotiation involved, which mainly relates to the power position of such financiers and the necessity of their financing.

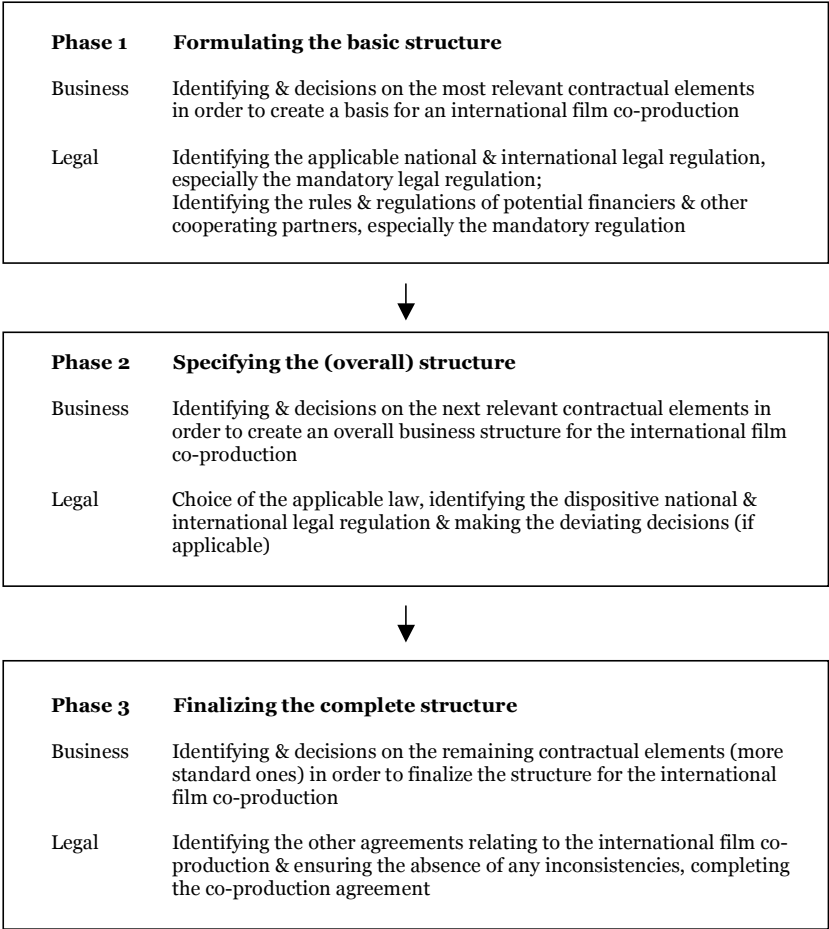
The *third* research question presented in this study was: *“What kind of model/framework could be presented in order to increase understanding of the Finnish film industry with regard to both business and legal management of international film co-productions and the use of co-production agreements?”*.

The empirical data presented above support the validity of the conceptual framework of this study (see Chapter 2.4.) and it’s applicability to the film industry, at least from the Finnish film industry perspective. It seems that not just in theory but also in the real world the said framework illustrates the legal and business environment of co-production agreements used in international film co-production alliances. In other words, from the empirical perspective, the framework can also be considered as a tool for understanding the complex business and legal environment of international film co-production alliances where each co-producing alliance partner operates and enters into one or several co-production agreements.

However, the challenge of understanding and managing such environment seems to relate most closely to the design of co-production agreements, and therefore, based on the overall research, the following figure, Figure 7, is presented as an attempt to illustrate how production company management could approach international film co-productions and the use of co-production agreements in order to be able to manage both



business and legal issues relating to such international cooperation. When contracting and designing a co-production agreement, in order to take into consideration both business and legal issues, it is suggested here that the production company management follows up the three different phases found in the process model, as illustrated in Figure 7.



**Figure 7.** Process model on the design and management of a co-production agreement combining the business and legal perspectives.

Figure 7 suggests three different phases for the production company management to go forward from the phase 1 to the phase 3 as a co-producing partner, whether acting as a delegate producer or as a minority co-producing partner, in order to manage different business and legal issues involved in an international film co-production and its co-production agreements.

In order to clarify more specifically the suggested model, during phase 1, co-producing partners are to formulate a basic structure for their international film co-production. This means that (a) from the business perspective, the co-producing partners identify and decide upon the most relevant contractual elements in order to create a basis for their international film co-production, and (b) from the legal perspective, the co-producing partners identify the applicable national and international legal regulation and especially the existence of any mandatory legal regulation. In other words, during phase 1, the co-producing partners aim to decide a core frame and structure for their international film co-production, from both business and legal perspectives.

During phase 2, a so-called overall structure is to be specified for the international film co-production. This means that (a) from the business perspective, the co-producing partners identify and decide upon the next relevant contractual elements to create an overall business structure for their international film co-production, and (b) from the legal perspective, the co-producing partners need to choose the law to be applied to their international film co-production, and while already aware of all the mandatory legal regulation the co-producing partners need to identify any dispositive national and international legal regulation relating to their international film co-production in order to make any deviating decisions, if applicable. In other words, during phase 2, the co-producing partners aim to decide how the international film co-production is carried out from both business and legal perspectives. From the legal perspective, as strongly suggested by the author of this study, it is recommended that the applicable law be decided at the beginning of phase 2, since such applicable law determines which legal regulation is to be applied, and therefore, may affect the content of the co-production agreement, especially through mandatory legal regulation.

Finally, during phase 3, the complete structure for the international film co-production is to be finalized. This means that (a) from the business perspective, the co-producing partners identify and decide on the remaining contractual elements (i.e. more standard ones) for the international film co-production in order to finalize the business structure, and (b) from the legal perspective, the co-producing partners identify all the other agreements relating to the international film co-production in order to ensure that there are no inconsistencies, and further complete and sign the final co-production agreement. In other words, during phase 3, the co-

producing partners aim to make sure that all the contractual elements have been agreed upon and covered by the co-production agreement.

An interesting finding is that Finnish producers start drafting a written co-production agreement during each of the different phases depending on the producer in question; a few already during phase 1, some during phase 2, and the remainder during phase 3. The author of this study recommends producers to start drafting a written co-production agreement at the end of phase 2 in order to first look for and negotiate a basic structure and to find out if mutual understanding between the potential co-producing partners on the basic terms can be achieved, and in case not, there is naturally no point in proceeding with concrete contracting. At the beginning of phase 2, there may still be conflicting interests and the potential co-producing partners may not find a mutual understanding on the overall structure, but before long while planning the international film co-production in phase 2, it is recommended that a start is made to drafting a written co-production agreement, when such drafting may also help to remind the co-producing partners of the different relevant issues to be agreed upon. Phase 3 is recommended in order to complete the co-production agreement and to make sure that all the relevant issues relating to the international film co-production are covered and included in such agreement.

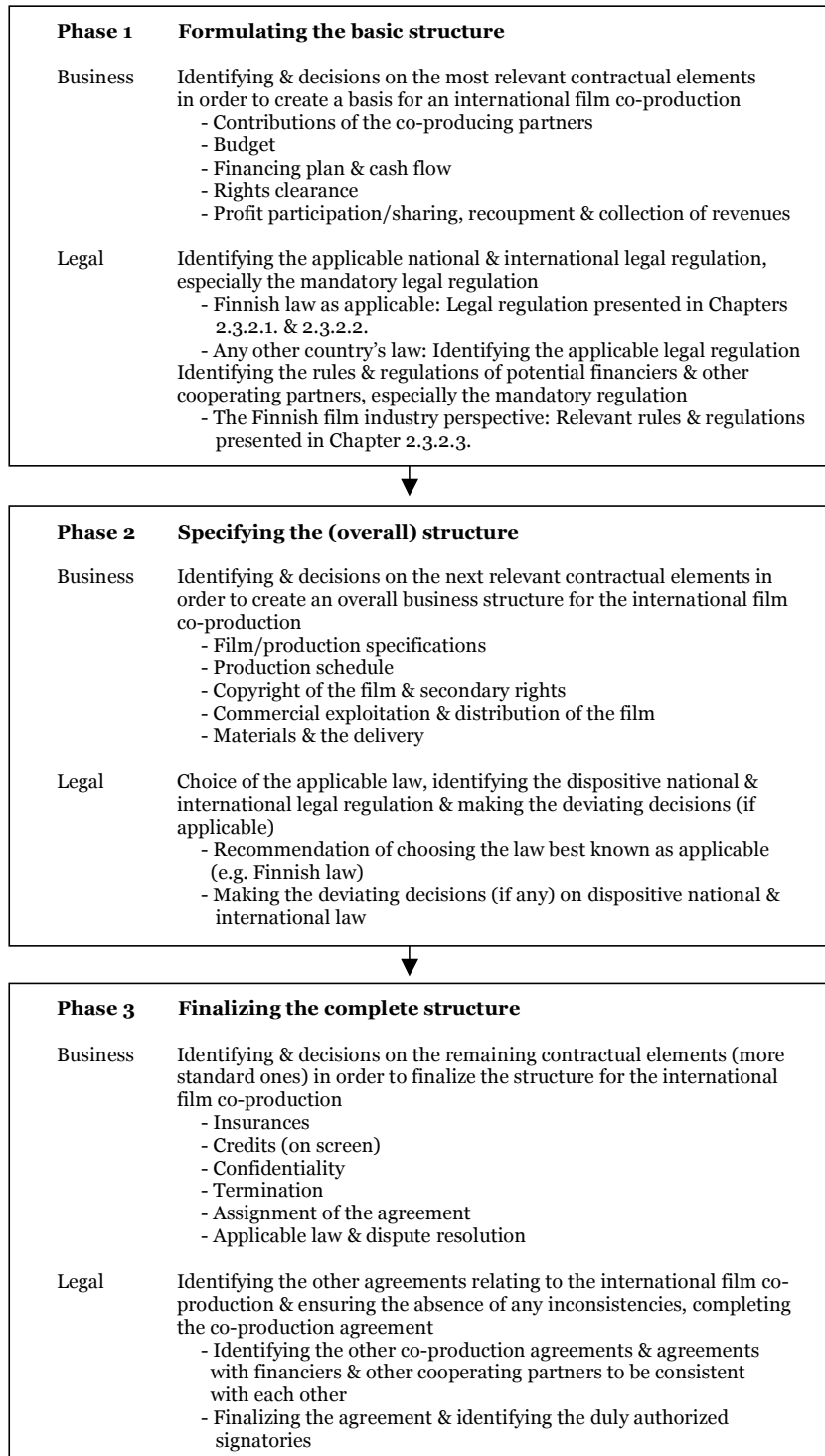
As an interesting point, it is further noteworthy that the process model of different phases presented above could be applied not only to the Finnish film industry, but to the international film co-productions in general. By means of the suggested model, film production company management could better understand the management of international film co-productions and co-production agreements from both business and legal perspectives, regardless of the nationality of the production company. Moreover, another interesting point is whether this process model could be applied to international alliances and alliance contracts in any other business fields and industries, representing an approach tool for the management of alliance contracts in general.

Nevertheless, since this study is carried out from the Finnish film industry perspective and the empirical data provide this research with the experiences of the Finnish film producers, the model of different phases presented above may also be applied in more detail to the Finnish film industry. Any detailed use of the suggested model (referring to the significance of different contractual elements and the applicable legal regulation) relates the model to specific countries, as in this study to

Finland. The following figure, Figure 8, illustrates the different phases of the design of a co-production agreement from the business and legal perspectives as applied to the Finnish film industry.

In order to clarify more specifically the suggested model (Figure 8) applied to the Finnish film industry, during phase 1, from the business perspective, the most relevant contractual elements have been identified to be ‘contributions of the co-producing partners’, ‘budget’, ‘financing plan and cash flow’, ‘rights clearance’ and ‘profit participation/sharing, recoupment and collection of revenues’ based on the empirical data of this study. In general, it seems that all these contractual elements strongly relate to the use of money, except the contractual provision relating to ‘rights clearance’. Consequently, in general terms, an international film co-production seems to be created strongly based on an agreement on the use of money, contributions (financial or any other) of the co-producing partners, and the clearance of rights in order to make it possible to co-produce a film. From the legal perspective, the co-producing partners need to identify the applicable national and international legal regulation, especially the mandatory legal regulation, e.g. Finnish law as presented in Chapters 2.3.2.1. and 2.3.2.2., as well as the rules and regulations of potential financiers, especially the mandatory regulation, e.g. in case of the Finnish film industry, the relevant rules and regulations presented in Chapter 2.3.2.3.

Based on the empirical data of this study, during phase 2, from the business perspective, the next relevant contractual elements have been identified to be ‘film/production specifications’, ‘production schedule’, ‘copyright of the film and secondary rights’, ‘commercial exploitation and distribution of the film’ and ‘materials and the delivery’. Consequently, in general terms, an overall business structure for an international film co-production seems to be created strongly based on an agreement on how such co-production is carried out in practice, in concrete terms, as well as how the rights in and to the film are shared between the co-producing partners. From the legal perspective, it is recommended that the co-producing partners make the choice of applicable law as well as deviating decisions on dispositive national and international law (if any).



**Figure 8.** Process model on the design and management of a co-production agreement combining the business and legal perspectives applied to the Finnish film industry.

During phase 3, from the business perspective, the remaining contractual elements have been identified as 'insurances', 'credits', 'confidentiality', 'termination', 'assignment of the agreement' and 'applicable law and dispute resolution'. Consequently, in general terms, a complete structure for an international film co-production seems to be finalized by agreeing on more standard contractual elements that are important but not that essential to determining the way each international film co-production is carried out. From the legal perspective, the co-producing partners need to make sure that there are no inconsistencies between different agreements relating to the international film co-production, including any other co-production agreements and any agreements with financiers and other cooperating partners in order to finalize and sign the co-production agreement.

As the final point, albeit a very interesting one, based on the empirical data, the contractual element relating to 'applicable law and dispute resolution' has been identified to be among the least important contractual elements, although, as this study has shown, applicable law and jurisdiction play rather critical role from the legal perspective. This also supports the value of combining business and legal studies in order to increase understanding of international alliances and contracting in such alliances.

## 5. CONTRIBUTIONS AND IMPLICATIONS OF THE STUDY

This *final* chapter of the doctoral thesis aims to conclude the overall research by beginning with the presentation of the theoretical contributions of the study. Further, the managerial implications of the study are presented, followed by suggestions for further studies.

### 5.1. Theoretical Contributions

The theoretical contributions of this study are presented as follows.

*First* and as a particularly valuable contribution, this study represents a multidisciplinary study by providing a combination of business and legal perspectives to the research area. Studying international film co-production alliances and co-production agreements used in such alliances influenced by the international legal environment provides together a valuable basis for the study. The business and legal academic degrees of the author of this study have enabled a combination of a business and legal approach to studying the subject area, and further enabled a more profound examination of collaborative agreements used in alliances from both business and legal perspectives; as applied to international film co-productions and the Finnish film industry. In order to emphasize the significance of multidisciplinary studies, the value of such studies has been recognized, e.g. by Argyres and Mayer (2007) who have pointed out the challenge of combining legal and business perspectives as business and legal scholars often study contracting issues extensively, but separately. Business and legal studies have not been combined to increase understanding of collaborative agreements used in alliances and furthermore applied to international film co-productions, which makes this study unique.

Carrying out a multidisciplinary study is certainly challenging, since defining clearly its scope, including many limitations and exclusions, is essential to ensure the integrity and consistency of the research. This study has been an attempt to explore the research area from an extensive perspective, although a rather purposeful one. Based on the literature review and the legal structure discussed in Chapter 2, a conceptual framework has been first proposed to support the understanding of international film co-production alliances that are based on co-production

agreements and influenced by different legal regulation. Further, based on the empirical findings, a model has been proposed in order to identify different phases of the design of a co-production agreement combining the business and legal perspectives, one to be applied to the international film co-productions in general and another to be applied to the Finnish film industry. Hopefully, this study has been able to indicate the relevance of and need for multidisciplinary studies combining the business and legal perspectives at least in the area of alliance contracting.

*Second*, this research represents a study within the field of international alliances and alliance contracting, and contributes to the literature and empirical research on the use of collaborative agreements in international alliances. Although studies have been carried out dealing with contracting and alliance contracts, as previously illustrated in the literature review, only recently has more focus been directed to particular contractual features and the design of alliance contracts (see e.g. Reuer & Ariño, 2007; Ariño & Reuer, 2004; Mayer, 2006). As argued by Ariño and Reuer (2004:37), “contract design is an essential part of alliance structuring”.

Moreover, regarding the actual content of each alliance contract, contractual provisions of each business contract are essentially a matter of express agreement between the contracting parties and which provisions are included in each contract is critical. As argued by Ariño and Reuer (2004), little attention has been paid to the alliance structuring aspects, such as the choice of the contractual provisions regulating the alliance relationship. This is further supported by Reuer et al. (2006:307) who state that “little is known about the contents of alliance contracts”. However, this study contributes to the body of research on the design of alliance contracts by studying co-production agreement as an alliance contract used in international film co-production alliances as well as the contractual provisions characteristic to and important for such co-production agreement. As argued in this study, since much depends on the alliance contract in question, what should be included therein, only by looking more closely at each business transaction can more specific information be given. Particularly different from the previous research, this study focuses on the use of co-production agreements specifically in the film industry, and therefore, extends the recent research on particular contractual features of alliance contracts by studying the key contractual provisions of co-production agreements. Regardless of the diverse research on alliance contracts, there has not been any prior study on how one specific international alliance is structured based on and managed by an alliance



contract, an examination of which contractual provisions are included in such contract, and how the design of such contract could be approached and carried out by including the film industry as the case, international film co-production as the international alliance, and co-production agreement as the alliance contract.

As the *third* contribution, this research represents not just a study within the field of alliances and alliance contracting but is explicitly applied and contributes to the film industry: the Finnish film industry in this case. To date research on international co-productions within the film industry has been very modest and small in number. Unfortunately, as pointed out by Morawetz et al. (2007), despite the increasing global prominence of international film co-productions, thus far the literature has taken little account of the phenomenon and what has been undertaken remains largely focused on national industries, and in particular on the US majors. However, this study has redressed this criticism by providing a multidisciplinary research approach to international film co-productions within the film industry. Based on the empirical data, there has also been strong support for the need of research on international film co-productions. The production companies enter into international film co-productions with an objective to cooperate internationally on a long-term basis. This study has shown that there is a clear need for an understanding of the co-producing partners on the structure of the international film co-productions from both business and legal perspectives.

This study has further shown that a co-production agreement plays a critical role determining the basis and guidelines for an international film co-production and this study has particularly emphasized how comprehensive and diversified co-production agreements really are. Although this study is carried out by employing the Finnish film industry as the case, some key findings may also be applied to international film co-productions in general. International film co-productions worldwide are an enormous area of international business, and this study has put one more effort to create doctoral level research focused on the film industry.

*Fourth*, this research also represents a study within the field of law and contributes to legal studies by examining the legal regulation relating and applicable to international film co-productions from the Finnish film industry perspective. Accordingly, the study has explored, from the Finnish film industry perspective, international law including international treaties and conventions, Finnish law as national law on contracts, copyrights and

applicable law and jurisdiction, as well as the rules and regulations set by various financiers, in order to create a coherent vision and understanding of the legal environment of international film co-productions that influence co-production agreements.

*Finally*, this study has shown the research subject to be a many-sided environment in which to manage, and a challenge for a single doctoral thesis. In the opinion of the author, this can be especially evaluated on the basis of the following:

In order to critically analyze this study, detailed analysis of each contractual element of a co-production agreement has not been carried out. It has been acknowledged by the author that more specific research on each contractual element could provide additional valuable knowledge of the research area. However, several contractual elements that are characteristic of co-production agreements could provide a researcher with an extensive area for doctoral studies, copyrights as one good example. Therefore, a conscious limitation has been accepted as part of the research undertaking. Another noteworthy aspect regarding contractual elements of co-production agreements is the fact that this study has not examined any concrete real-life co-production agreements and the actual contractual elements included in such agreements made by Finnish production companies involved in international film co-productions. This choice was made due to the fact that the Finnish producers refused to provide the author with their confidential data including co-production agreements, and therefore, and as discussed above, it was decided to carry out a single-case study. However, it is worth noting that this does not mean that a single case study setting would make this research any less important. A more in-depth case study of international film co-productions including an examination and analysis of co-production agreements would create a different approach to the research area. Interviewing as many Finnish producers as possible that have experience of and been involved with one or many international film co-productions provides more comprehensive empirical data on different international film co-productions than multiple cases with thinner data.

Furthermore, since the empirical data are limited to the Finnish film industry, interviews from abroad could have provided valuable results. This is acknowledged by the author, since there are many production companies, e.g. in the Nordic countries, active in international film co-productions that certainly would be able to provide valuable information. However, as

previously argued, the multidisciplinary approach and the legal perspective of this study required limitation in order to enable the proper analysis of the applicable legal regulation, and therefore, limiting the research to the Finnish film industry was a conscious decision.

A further relevant critical aspect is that this research cannot be compared with any specific previous studies of the research area, and therefore; in this respect it cannot provide any particular supportive or critical arguments for any previous studies. However, hopefully the study inspires other researchers in the research area to develop comparable studies in order to explore whether such studies provide support for the findings of this study or challenge them.

## **5.2. Managerial Implications**

The combination of business and legal perspectives specifically makes the research area of this study interesting and worthy of study as the empirical study has shown. Based on the empirical data, a co-production agreement seems to play more than just a role of a standard business contract, since the design of a co-production agreement pushes the contracting parties to go into and agree on the variety of different issues relating to their international film co-production. Production companies should take into consideration both business and legal issues which both strongly determine international film co-productions and co-production agreements as well as relate to each other. Since a co-production agreement forms the frame and rules for an international film co-production alliance, the content of the co-production agreement should not be overlooked. Moreover, since international film co-productions, and consequently also co-production agreements, vary case by case, it is a challenging task for production company management to design a co-production agreement for each case.

How well each co-producing partner is aware of all different issues involved seems to depend on the skills and knowledge of each partner. This study has strongly emphasized the importance of understanding and agreeing upon all the different elements relating to international film co-productions. The co-producing partners should always share a clear joint understanding of how to carry out each international film co-production. Where co-producing partners are not familiar with all the different elements relating to their international film co-productions, this may easily lead to a situation wherein the co-producing partners fail to agree on some

even highly critical issues when forming a co-production agreement and international film co-production alliance. In such case, the co-producing partners are forced to agree upon the missing elements later during the international film co-production, which may cause difficulties and unnecessary risks to the co-producing partners. It cannot be emphasized enough how important it is that all the relevant issues are agreed upon and covered, and that the content of each co-production agreement is consistent with what has been agreed upon, and does not include anything open to interpretations.

Based on this study, the author of this study recommends highly that production company management takes the time to carefully agree on the different issues relating to their international film co-productions as well as carefully design their co-production agreements. Supported by the study, although each co-production agreement may vary a lot, it is very helpful to manage such agreements if the production company management is familiar with the key contractual elements relating to international film co-productions, which elements seem to be highly characteristic ones based on this study. Although there is still variety relating to how to agree on each contractual element, recognizing the different elements and knowing the basics is recommended in order to be able understand and manage the formation of an international film co-production as well as the design of a co-production agreement. When the production company management is familiar with at least the basic structure of a co-production agreement and its key contractual elements and understands the legal challenges relating to international film co-productions, it is a great advantage for the management in order to be able to understand international film co-productions as more or less complicated cases.

Based on the research findings, Figure 7 depicted in Chapter 4.3. presents a tool for production companies for the overall management of a co-production agreement in terms of an international film co-production alliance. By means of the suggested model, film producers could better understand the management of international film co-productions from both business and legal perspectives. This applies not only to the Finnish film industry, but also in general. Any detailed use of the suggested model relates the model to specific countries, and Figure 8, also presented in Chapter 4.3., illustrates the model of the different phases of the design of a co-production agreement applied to the Finnish film industry.

One specific issue relating to the suggested model referred to above that is especially worth pointing out is the cognition of all the other agreements relating to international film co-production when designing a co-production agreement. Based particularly on the work experience of the author, unfortunately this may often be forgotten. In the author's opinion, production company management should always remember to pay special attention to ensuring the absence of any inconsistencies between all the collaborative agreements (co-production agreements, financing agreements, etc.) involved in international film co-production when designing any co-production agreement for such film co-production.

From the legal perspective in particular, this study has shown that the importance of the choice of the applicable law cannot be emphasized enough. The applicable law has received surprisingly little attention and Finnish producers have not considered the choice of applicable law to be very important compared to other contractual elements relating to international film co-productions. Only one interviewee considered the contractual element of applicable law and dispute resolution to be among the five most important contractual elements of a co-production agreement. It is worth remembering that the choice of the applicable law may play a very critical role, since the law that is decided to be applicable may have influence on international film co-production, and therefore, it should be known very thoroughly.

### **5.3. Suggestions for Further Research**

Some suggestions for further research have already been referred to above when relating to the different aspects of the study. The following suggestions for further studies are made to point some issues very closely related to the research:

*First*, geographically, this study focuses on the Finnish film industry. This is especially due to the limitation necessary to be made relating to the study on applicable legal regulation, and in this study the legal regulation relating to the Finnish film industry is examined. However, it would be interesting to know how the findings would differ between countries. Furthermore, as previously discussed above, it would be interesting to compare the findings of this study, especially the suggested process model (see Figure 7), to those relating to any other business field or industry concerned with the management of international alliances and alliance contracts. *Second*, as

previously presented in Chapter 3.1., the case study setting of this study was changed from a multiple-case study to a single-case study. In order to increase the understanding of international film co-productions and the use of co-production agreements, findings from a multiple-case study, would be interesting and would provide different kinds of contributions. *Third*, each key contractual provision could also be examined in more detail i.e. how co-producing partners agree on such provisions in co-production agreements. This study has focused on identifying the key contractual provisions dealt with in co-production agreements, but does not study e.g. how such key elements are agreed upon in such agreements.

*Fourth*, from a process perspective of alliances, this study focuses on the contracting part of the alliance process, and attention is not directed e.g. to the reasons, motives and/or rationales leading to international cooperation in the film industry and international film co-productions. Further, the study has not focused on studying how the most appropriate alliance partner is chosen, i.e. partner selection is not studied herein, since this study focuses on the use of co-production agreements between co-producing alliance partners. However, studies of the areas of alliance research in relation to international film co-productions mentioned above could also provide the film industry with valuable information. *Fifth*, nor does the study pay attention to language and other issues and whether they have a positive or negative influence on international cooperation in the film industry. However, such a research area could also be a valuable theme of study. *Finally*, relating to the research on contracting, the meaning of trust in international film co-productions would also be worthy of study, as would negotiations and the contracting process itself from a cross-cultural perspective.

## REFERENCES

- Alberstat, P. (2000): *Independent Producer's Guide to Film & TV Contracts*. Oxford, Focal Press.
- Alvarez, J.L., Mazza, C., Strandgaard Pedersen, J. & Svejenova, S. (2005): Shielding Idiosyncrasy from Isomorphic Pressures: Towards Optimal Distinctiveness in European Filmmaking. *Organization*, Vol. 12, No. 6, pp. 863-888.
- Argyres, N. & Mayer, K.J. (2007): Contract design as a firm capability: an integration of learning and transaction cost perspectives. *Academy of Management Review*, Vol. 32, No. 4, pp. 1060-1077.
- Ariño, A. & Reuer, J.J. (2004): Designing and renegotiating strategic alliance contracts. *Academy of Management Executive*, Vol. 18, No. 3, pp. 37-48.
- Ariño, A., de la Torre, J. & Ring, P.S. (2001): Relational quality: Managing trust in corporate alliances. *California Management Review*, Vol. 44, No. 1, pp. 109-131.
- Atkinson, P. & Silverman, D. (1997): Kundera's Immortality: The interview society and the invention of the self. *Qualitative Inquiry*, Vol. 3, Issue 3, pp. 304-326.
- Baker, R. (1995): *Media Law: A user's guide for film and programme makers*. London, Routledge.
- Ball, D.A. & McCulloch, W.H. (Jr.) (1996): *International Business, the Challenge of Global Competition*. Chicago, Irwin.
- Bartlett, C.A. & Ghoshal, S. (1996): *Transnational Management* (2<sup>nd</sup> edition). Boston, Irwin.
- Baumgarten, P.A., Farber, D.C. & Fleischer, M. (1992): *Producing, Financing and Distributing Film*. New York, Limelight Editions.
- Borys, B. & Jemison, D.B. (1989): Hybrid Arrangements as Strategic Alliances: Theoretical Issues in Organizational Combinations. *Academy of Management Review*, Vol. 14, No. 2, pp. 234-249.
- Brouthers, K.D., Brouthers, L.E. & Wilkinson, T.J. (1995): Strategic Alliances: Choose Your Partners. *Long Range Planning*, Vol. 28, No. 3, pp. 18-25.
- Buckley, P.J. & Casson, M. (1988): *A Theory of Cooperation in International Business*. Article in F.J. Contractor & P. Lorange (editors): *Cooperative Strategies in International Business*. Lexington/Massachusetts, Lexington Books.
- Campbell, É. & Reuer, J.J. (2001): International Alliance Negotiations: Legal Issues for General Managers. *Business Horizons*, Vol. 44, Issue 1, pp. 19-26.

- Chisholm, D.C. (1993): Asset specificity and long-term contracts: The case of the motion-pictures industry. *Eastern Economic Journal*, Vol. 19, Issue 2, pp. 143-155.
- Coffey, A. & Atkinson, P. (1996): *Making Sense of Qualitative Data, Complementary Research Strategies*. Thousand Oaks/CA, Sage Publications.
- Cones, J.W. (1992): *Film Finance & Distribution, a dictionary of terms*. CA, Silman-James Press.
- Contractor, F.J. & Lorange, P. (editors) (2002): *Cooperative Strategies and Alliances in International Business, Joint Ventures and Technology Partnerships between Firms*. Oxford/UK, Elsevier Science Ltd.
- Contractor, F.J. & Kundu, S.K. (1998): Modal Choice in a World of Alliances: Analyzing Organizational Forms in the International Hotel Sector. *Journal of International Business Studies*, Vol. 29, No. 2, pp. 325-358.
- Contractor, F.J. & Lorange, P. (1988): *Why Should Firms Cooperate? The Strategy and Economics Basis for Cooperative Ventures*. Article in J.J. Reuer (editor): *Strategic Alliances: Theory and Evidence* (2004). New York, Oxford University Press.
- Converse, J.M. & Schuman, H. (1974): *Conversations at Random: Survey Research as Interviewers See It*. New York, Wiley.
- Dally, P., Durández, Á., Jiménez, L., Pasquale, A. & Vidal, C. (2002): *The Audiovisual Management Handbook*. Madrid, A Media Business School Publication.
- Daniels, J.D. & Cannice, M.V. (2004): *Interview Studies in International Business Research*. Article in R. Marschan-Piekkari & C. Welch (editors): *Handbook of Qualitative Research Methods for International Business*. Cheltenham/UK, Edward Elgar.
- Das, T.K. & Teng, B.-S. (1998): Between trust and control: developing confidence in partner cooperation in alliances. *Academy of Management Review*, Vol. 23, No. 3, pp. 491-512.
- De Jong, G. & Klein Woolthuis, R.J.A. (2009): The content and role of formal contracts in high-tech alliances. *Innovation: management, policy & practice*, Vol. 11, Issue 1, pp. 44-59.
- Deeds, D.L. & Hill, C.W.L. (1998): An examination of opportunistic action within research alliances: evidence from the biotechnology industry. *Journal of Business Venturing*, Vol. 14, Issue 2, pp. 141-163.
- Dey, I. (1993): *Qualitative Data Analysis, A User-Friendly Guide for Social Scientists*. London, Routledge.
- Douglas, J.D. (1985): *Creative Interviewing*. Beverly Hills/CA, Sage Publications.



- Doz, Y.L. & Hamel, G. (1998): *Alliance Advantage, The Art of Creating Value through Partnering*. Boston/Massachusetts, Harvard Business School Press.
- Doz, Y.L. (1996): The Evolution of Cooperation in Strategic Alliances: Initial Conditions or Learning Processes? *Strategic Management Journal*, Vol. 17, Special issue, Summer 1996, pp. 55-83.
- Eisenhardt, K.M. & Schoonhoven, C.B. (1996): Resource-based View of Strategic Alliance Formation: Strategic and Social Effects in Entrepreneurial Firms. *Organization Science*, Vol. 7, No. 2, pp. 136-150.
- Enrich, E. (2005): Legal Aspects of International Film Co-Production. Translation by the European Audiovisual Observatory with a view to presenting it at the 19th Conference on International Audiovisual Law, 12-13 May 2005, Cannes.
- Ernst, D. (2003): *Envisioning Collaboration*. Article in J.D. Bamford, B. Gomes-Casseres & M.S. Robinson: *Mastering Alliance Strategy, A Comprehensive Guide to Design, Management, and Organization*. San Francisco, Jossey-Bass.
- Eskola, J. & Suoranta, J. (1998): *Johdatus laadulliseen tutkimukseen*. Jyväskylä, Gummerus Kirjapaino Oy.
- Faems, D., Janssens, M., Madhok, A. & Van Looy, B. (2008): Toward an Integrative Perspective on Alliance Governance: Connecting Contract Design, Trust Dynamics, and Contract Application. *Academy of Management Journal*, Vol. 51, No. 6, pp. 1053-1078.
- Firestone, W.A (1993): Alternative arguments for generalizing from data as applied to qualitative research. *Educational Researcher*, Vol. 22, No. 4, pp. 16-23.
- Frankel, R., Whipple, J.S. & Frayer, D.J. (1996): Formal versus informal contracts: achieving alliance success. *International Journal of Physical Distribution & Logistics Management*, Vol. 26, No. 3, pp. 47-63.
- García-Canal, E. (1996): Contractual Form in Domestic and International Strategic Alliances. *Organization Studies*, Vol. 17, No. 5, pp. 773-794.
- Ghauri, P. & Gronhaug, K. (2005): *Research Methods in Business Studies: A Practical Guide* (3<sup>rd</sup> edition). Harlow/UK, Prentice-Hall.
- Ghauri, P. (2004): *Designing and Conducting Case Studies in International Business Research*. Article in R. Marschan-Piekkari and C. Welch (editors): *Handbook of Qualitative Research Methods for International Business*. Cheltenham/UK, Edward Elgar.
- Ghauri, P.N. & Usunier, J.-C. (2003): *Some General Guidelines for Negotiating International Business*. Article in P.N. Ghauri and J.-C. (editors): *International Business Negotiations* (2<sup>nd</sup> edition). Amsterdam, Pergamon/An Imprint of Elsevier.

- Glaister, K.W. & Buckley, P.J. (1999): Performance Relationships in UK International Alliances. *Management International Review*, Vol. 39, No.2, pp. 123-147.
- Gulati, R. (1998): Alliances and Networks. *Strategic Management Journal*, Vol. 19, pp. 293-317.
- Gulati, R. (1995): Does familiarity breed trust? The implications of repeated ties for contractual choice in alliances. *Academy of Management Journal*, Vol. 38, No. 1, pp. 85-112.
- Györy, M. (1995): Cinema and Television – International Coproduction Contracts: Legal Problems and Information Needed. Online publication of the European Audiovisual Observatory, Brussels.
- Haarmann, P-L. (2005): *Tekijänoikeus ja lähioikeudet*. Helsinki, Talentum.
- Hagedoorn, J. & Heslen, G. (2007): Contract Law and the Governance of Inter-Firm Technology Partnerships – An Analysis of Different Modes of Partnering and Their Contractual Implications. *Journal of Management Studies*, Vol. 44, Issue 3, pp. 342-366.
- Hamel, G. (1991): Competition for Competence and Interpartner Learning within International Strategic Alliances. *Strategic Management Journal*, Vol. 12, pp. 83-103.
- Hamel, G., Doz, Y.L. & Prahalad, C.K. (1989): Collaborate with your competitors - and win. *Harvard Business Review*, 67, pp. 133-139.
- Hanssen, F.A. (2000): The Block Booking of Films Reexamined. *Journal of Law & Economics*, Vol. 43, No. 2, pp. 395-426.
- Harbison, J.R. & Pekar, P. Jr. (1998): *Smart Alliances, A Practical Guide to Repeatable Success*. San Francisco, Booz-Allen & Hamilton.
- Harrigan, K.R. (2002): *Strategic Alliances and Partner Asymmetries*. Article in F.J. Contractor & P. Lorange (editors): Cooperative Strategies and Alliances in International Business, Joint Ventures and Technology Partnerships between Firms. Oxford/UK, Elsevier Science Ltd.
- Hemmo, M. (2005): *Sopimusnoikeus III*. Helsinki, Talentum.
- Hemmo, M. (2003): *Sopimusnoikeus I*. Helsinki, Kauppakaari.
- Hergert, M. & Morris, D. (1988): *Trends in International Collaborative Agreements*. Article in F.J. Contractor & P. Lorange (editors): Cooperative Strategies in International Business. Lexington/Massachusetts, Lexington Books.
- Hoetker, G. & Mellewigt, T. (2009): Choice and Performance of Governance Mechanisms: Matching Alliance Governance to Asset Type. *Strategic Management Journal*, Vol. 30, Issue 10, pp. 1025-1044.
- Holstein, J.A. & Gubrium, J.F. (1997): *Active Interviewing*. Article in D. Silverman (editor): Qualitative Research; Theory, Method and Practice. London, Sage Publications.

- Inkpen, A.C. (2001): *Strategic Alliances*. Article in A.M. Rugman & T.L. Brewer (editors): *The Oxford Handbook of International Business*. Oxford/New York, University Press.
- Inkpen, A.C. (1998): Learning, Knowledge Acquisition and Strategic Alliances. *European Management Journal*, Vol. 16, No. 2, pp. 223-229.
- Jensen, K. & Unt, I. (2002): *Negotiating partnerships; Increase profits and reduce risks*. London, Prentice Hall.
- Joutsamo, K, Aalto, P, Kaila, H. & Maunu, A. (1996): *Eurooppaoikeus*. Helsinki, Lakimiesliiton kustannus.
- Kallio, J. (editor) (2001): *Sisältötuotannon kilpailukyky - vertaileva tutkimus Suomesta, Ruotsista ja Irlannista*. Helsinki, LTT-Tutkimus Oy.
- Keenan, D. & Riches, S. (1995): *Business Law*. London, Pitman Publishing.
- Kennedy, M. (1979): Generalizing from single case studies. *Evaluation Quarterly* 3, pp.661-678.
- Kenney, R.W. & Klein, B. (2000): How Block Booking Facilitated Self-Enforcing Film Contracts. *Journal of Law & Economics*, Vol. 43, No. 2, pp. 427-435.
- Khanna, T., Gulati, R. & Nohria, N. (1998): The Dynamics of Learning Alliances: Competition, Cooperation, and Relative Scope. *Strategic Management Journal*, Vol. 19, No. 3, pp. 193-210.
- Killing, J.P. (1988): *Understanding Alliances: The Role of Task and Organizational Complexity*. Article in F.J. Contractor and P. Lorange (editors): *Cooperative Strategies in International Business*. Lexington/Massachusetts, Lexington Books.
- Kirk, J. & Miller, M.L. (1986): *Reliability and Validity in Qualitative Research*. Beverly Hills/CA, Sage Publications.
- Klein Woolthuis, R., Hillebrand, B. & Nooteboom, B. (2005): Trust, Contract and Relationship Development. *Organization Studies*, Vol. 26, Issue 6, pp. 813-840.
- Kogut, B. (1988): Joint ventures: Theoretical and Empirical Perspectives. *Strategic Management Journal*, Vol. 9, No. 4, pp. 319-332.
- Kohvakka, R. & Huttunen, M. (1997): *Audio-visual production and international co-productions in Finland*. Helsinki, Statistics Finland.
- Koza, M.P. & Lewin, A.Y. (1998): The Co-evolution of Strategic Alliances. *Organization Science*, Vol. 9, Issue 3, pp. 255-264.
- Lane, P. & Lubatkin, M. (1998): Relative absorptive capacity and interorganizational learning. *Strategic Management Journal*, Vol. 19, Issue 5, pp. 461-477.

- Larsson, R., Bengtsson, L., Henriksson, K. & Sparks, J. (1998): The Interorganizational Learning Dilemma: Collective Knowledge Development in Strategic Alliances. *Organization Science*, Vol. 9, Issue 3, pp. 285-305.
- Lee, J.J. Jr. (2000): *The Producer's Business Handbook*. Boston, Focal Press.
- Lewis, J.D. (1990): *Partnerships for Profit, Structuring and Managing Strategic Alliances*. New York, The Free Press.
- Li, J.J., Poppo, L. & Zhou, K.Z. (2010): Relational Mechanisms, Formal Contracts, and Local Knowledge Acquisition by International Subsidiaries. *Strategic Management Journal*, Vol. 31, Issue 4, pp. 349-370.
- Lincoln, Y.S. & Guba, E.G. (2000): *Paradigmatic Controversies, Contradictions, and Emerging Confluences*. Article in N.K. Denzin and Y.S. Lincoln (editors): *Handbook of Qualitative Research* (second edition). Thousand Oaks/CA, Sage Publications.
- Litwak, M. (2004): *Risky Business: Financing & Distributing Independent Films*. Los Angeles, Silman-James Press.
- Lorange, P. & Roos, J. (1992): *Strategic Alliances: Formation, Implementation, and Evolution*. Cambridge/Massachusetts, Blackwell.
- Lorange, P., Roos, J. & Bronn, P.S. (1992): Building Successful Strategic Alliances. *Long Range Planning*, Vol. 25, No. 6, pp. 10-17.
- Lorange, P. & Roos, J. (1991): Why Some Strategic Alliances Succeed and Others Fail. *Journal of Business Strategy*, January/February 1991, pp. 25-30.
- Lorenzen, M. (2007): Internationalization vs. Globalization of the Film Industry. *Industry and Innovation*, Vol. 14, No. 4, pp. 349-357.
- Lui, S.S. & Ngo, H. (2004): The Role of Trust and Contractual Safeguards on Cooperation in Non-equity Alliances. *Journal of Management*, Vol. 30, No. 4, pp. 471-485.
- Luo, Y. (2002): Contract, cooperation, and performance in international joint ventures. *Strategic Management Journal*, Vol. 23, Issue 10, pp. 903-919.
- Luo, Y. (1997): Partner Selection and Venturing Success: The Case of Joint Ventures with Firms in the People's Republic of China. *Organization Science*, Vol. 8, No. 6, pp. 648-662.
- Luostarinen, R. & Welch, L. (1997): *International Business Operations*. Helsinki, Helsinki School of Economics and Business Administration.
- Lyons, B. & Mehta, J. (1997): Contracts, opportunism and trust: Self-interest and social orientation. *Cambridge Journal of Economics*, Vol. 21, Issue 2, pp. 239-257.

- Malanczuk, P. (1997): *Akehurst's Modern Introduction to International Law*. London, Routledge.
- Marschan-Piekkari, R., Macdonald, S. & Assimakopoulos, D. (2001): In bed with a stranger: finding partners for collaboration in the European information technology programme. *Science and Public Policy*, Vol. 28, No. 1, pp. 68-78.
- Mayer, K.J (2006): *Designing Interorganizational Contracts: the Role of Detailed Task Descriptions*. Article in A. Arino & J.J. Reuer (editors): *Strategic Alliances, Governance and Contracts*. Houndmills/UK, Palgrave Macmillan.
- Mayer, K.J. & Argyres, N.S. (2004): Learning to Contract: Evidence from the Personal Computer Industry. *Organization Science*, Vol. 15, No. 4, pp. 394-410.
- Mead, R. (1998): *International Management, Cross-Cultural Dimensions*. Cambridge/Massachusetts, Blackwell Publishers.
- Mead, R. (1990): *Cross-Cultural Management Communication*. West Sussex/England, John Wiley & Sons.
- Mendenhall, M., Punnett, B.J. & Ricks, D. (1995): *Global Management*. Cambridge/Massachusetts, Blackwell Publishers.
- Miles, M.B. & Huberman, A.M. (1994): *Qualitative Data Analysis, An Expanded Sourcebook* (second edition). London, Sage Publications.
- Mitchell, W., Dussauge, P. & Garrette, B. (2002): Alliances With Competitors: How to Combine and Protect Key Resources? *Journal of International Business Studies*, Vol. 11, No. 3, pp. 203-223.
- Mohr, J. & Spekman, R. (1994): Characteristics of Partnership Success: Partnership Attributes, Communication Behavior, and Conflict Resolution Techniques. *Strategic Management Journal*, Vol. 15, No.2, pp. 135-152.
- Moore, S. (2000): *The Biz: the basic business, legal and financial aspects of the film industry*. Los Angeles, Silman-James Press.
- Morawetz, N., Hardy, J., Haslam, C. & Randle, K. (2007): Finance, Policy and Industrial Dynamics – The Rise of Co-productions in the Film Industry. *Industry and Innovation*, Vol. 14, No. 4, pp. 421-443.
- Mowery, D., Oxley, J. & Silverman, B. (1996): Strategic alliances and interfirm knowledge transfer. *Strategic Management Journal*, Vol. 17 (Winter Special Issue), pp. 77-91.
- Naarajärvi, P. & Koivisto, J.V. (2002): *Which Law, Which Forum? Jurisdiction and Applicable Law in International Electronic Commerce*. Helsinki, WSOY.
- Neumann, P. & Appelgren, C. (2002): *The Fine Art of Co-Producing*. Madrid, A Media Business School Publication.

- Ohmae, K. (1989): The Global Logic of Strategic Alliances. *Harvard Business Review*, March/April 1989, pp. 143-154.
- Osborn, R.N. & Hagedoorn, J. (1997): The Institutionalization and Evolutionary Dynamics of Interorganizational Alliances and Networks. *Academy of Management Journal*, Vol. 40, No. 2, pp. 261-278.
- Osborn, R.N. & Baughn, C.C. (1990): Forms of Interorganizational Governance for Multinational Alliances. *Academy of Management Journal*, Vol. 33, No. 3, pp. 503-519.
- Parkhe, A. (1993a): Partner Nationality and the Structure-Performance Relationship in Strategic Alliances. *Organization Science*, Vol. 4, No. 2, pp. 301-324.
- Parkhe, A. (1993b): Strategic Alliance Structuring: A Game Theoretic and Transaction Cost Examination of Interfirm Cooperation. *Academy of Management Journal*, Vol. 36, No. 4, pp. 794-829.
- Patton, M.Q. (2002): *Qualitative Research & Evaluation Methods* (third edition). Thousand Oaks/CA, Sage Publications.
- Pekar, P. Jr. & Allio, R. (1994): Making Alliances Work – Guidelines for Success. *Long Range Planning*, Vol. 27, No. 4, pp. 54-65.
- Poppo, L. & Zenger, T. (2002): Do formal contracts and relational governance function as substitutes or complements? *Strategic Management Journal*, Vol. 23, No. 8, pp. 707-725.
- Punnett, B.J. & Ricks, D.A. (1992): *International Business*. Boston, PWS-KENT Publishing Company.
- Pöyhönen, J. (editor) (2002): *An Introduction to Finnish Law*. Helsinki, Kauppakaari.
- Reuer, J.J. & Ariño, A. (2007): Strategic alliance contracts: Dimensions and determinants of contractual complexity. *Strategic Management Journal*, Vol. 28, No. 3, pp. 313-330.
- Reuer, J.J., Ariño, A. & Mellewigt, T. (2006): Entrepreneurial alliances as contractual forms. *Journal of Business Venturing*, Vol. 21, Issue 3, pp. 306-325.
- Reuer, J.J. & Ariño, A. (2002): Contractual renegotiations in strategic alliances. *Journal of Management*, Vol. 28, No. 1, pp. 47-68.
- Reuer, J.J., Zollo, M. & Singh, H. (2002): Post-formation dynamics in strategic alliances. *Strategic Management Journal*, Vol. 23, No. 2, pp. 135-151.
- Richardson, L. (2000): *Writing, A Method of Inquiry*. Article in N.K. Denzin and Y.S. Lincoln (editors): *Handbook of Qualitative Research* (second edition). Thousand Oaks/CA, Sage Publications.
- Ring, P.S. & Van de Ven, A.H. (1994): Developmental Processes of Cooperative Interorganizational Relationships. *Academy of Management Review*, Vol. 19, No.1, pp. 90-118.

- Robins, J.A. (1993): Organization as strategy: Restructuring production in the film industry. *Strategic Management Journal*, Summer93 Special Issue, Vol. 14, pp. 103-118.
- Ryall, M.D. & Sampson, R.C. (2006): *Do prior alliances influence contract structure? Evidence from technology alliance contracts*. Article in A. Ariño and J.J. Reuer (editors): *Strategic Alliances, Governance and Contracts*. Houndmills/UK, Palgrave Macmillan.
- Saarnilehto, A., Hemmo, M. & Kartio, L. (2001): *Varallisuusoikeus*. Helsinki, WSOY Lakitieto.
- Salokannel, M. (1997): *Ownership of Rights in Audiovisual Productions. A Comparative Study*. The Hague, Kluwer Law International.
- Savage, N. & Bradgate, R. (1993): *Business Law*. London, Butterworths.
- Saxton, T. (1997): The Effects of Partner and Relationship Characteristics on Alliance Outcomes. *Academy of Management Journal*, Vol. 40, No.2, pp. 443-461.
- Schermerhorn, J.R. jr. (2001): Determinants of Interorganizational Cooperation. *Academy of Management Journal*, Vol. 18, No. 4, pp. 846-856.
- Schwandt, T.A. (2000): *Three Epistemological Stances for Qualitative Inquiry, Interpretivism, Hermeneutics, and Social Constructionism*. Article in N.K. Denzin and Y.S. Lincoln (editors): *Handbook of Qualitative Research* (second edition). Thousand Oaks/CA, Sage Publications.
- Segil, L. (1998): Strategic Alliances for the 21<sup>st</sup> Century. *Strategy and Leadership*, Sep/Oct 1998, Vol. 26, No. 4, pp. 12-16.
- Seristö, H. & Vaara, E. (1999): *A Sensemaking Perspective on International Alliances*. Article in U. Lehtinen & H. Seristö (editors): *Perspective on Internationalization*. Helsinki, Helsinki School of Economics and Business Administration.
- Shenkar, O. & Reuer, J.J. (editors) (2006): *Handbook of Strategic Alliances*. Thousand Oaks/California, Sage Publications.
- Silverman, D. (2006): *Interpreting Qualitative Data, Methods for Analyzing Talk, Text and Interaction* (3<sup>rd</sup> edition). London, Sage Publications.
- Taoka, G.M. & Beeman, D.R. (1991): *International Business, Environments, Institutions, and Operations*. New York, HarperCollins Publishers.
- Vogel, H.L. (2007): *Entertainment Industry Economics: a guide for financial analysis*. Cambridge, University Press.
- Yin, R.K. (2009): *Case Study Research, Design and Methods* (fourth edition). Applied social research methods series, Vol. 5. Thousand Oaks/CA, Sage Publications.

Zollo, M., Reuer, J.J. & Singh, H. (2002): Interorganizational routines and performance in strategic alliances. *Organization Science*, Vol. 13, No. 6, pp. 701-713.



## **APPENDIX 1**

## THE INTERVIEW QUESTIONS

(Please note that the interviews were carried out in Finnish language.)

### I Background

*(Tausta)*

- Producer & production company  
*(Tuottaja, tuotantoyhtiö)*
- How many international film co-productions have you been involved in (films, premieres, countries involved)?  
*(Kuinka monessa kansainvälisessä yhteistuotannossa olette olleet mukana (elokuvat, ensi-illat, mukana olleet maat)?)*

### II International Film Co-Production as an Alliance

*(Kansainvälinen elokuvayhteistuotanto yhteistyökumppanuutena)*

- Do you consider international film co-productions as alliances?  
*(Koetteko elokuvien kansainväliset yhteistuotannot yhteistyökumppanuuksina?)*
- How do you experience temporally an international film co-production/co-production alliance? An estimate of the duration.  
*(Miten koette kansainvälisen yhteistuotannon/yhteistyökumppanuuden aikajänteenä? Arvio kestosta.)*
- What are the most important/critical elements relating to an international film co-production in your opinion? What are the challenges relating to international film co-productions in your opinion?  
*(Mitkä ovat mielestänne merkittävimmät/kriittisimmät tekijät kansainvälisessä yhteistuotantokumppanuudessa? Mitkä ovat mielestänne kansainvälisten yhteistuotantokumppanuuksien haasteet?)*
- How important is the contracting phase of an international film co-production? Are there any cultural differences?  
*(Kuinka tärkeä sopimusvaihe on kansainvälisessä yhteistuotannossa? Onko mahdollisia kulttuurillisia eroja?)*

### III Co-Production Agreements

*(Yhteistuotantosopimukset)*

- How many of your international film co-productions are based on a co-production agreement? How about the others?  
*(Kuinka monta kansainvälistä yhteistuotantoanne perustuu yhteistuotantosopimukseen? Miten muut?)*
- How does a co-production agreement function as a basis for an international film co-production? Pros and cons?  
*(Kuinka yhteistuotantosopimus toimii kansainvälisen yhteistyökumppanuuden perustana? Myötä- ja vasta-argumentit?)*
- In what phase does international cooperation start vs. the co-producing partners draft and enter into a co-production agreement? What is the time used for the development of an international film co-production vs.

the time used for drafting a co-production agreement? Overlapping vs. successive?

*(Missä vaiheessa kansainvälinen yhteistyö alkaa vs. yhteistuotantosopimus laaditaan? Mikä on kansainvälisen yhteistyön kehittelyyn vs. sopimuksen laadintaan käytetty aika? Pällekkäistä vs. peräkkäistä?)*

- Who/which co-producing partner drafts a co-production agreement? Who participate in contracting/negotiations?  
*(Kuka laatii yhteistuotantosopimuksen? Ketkä osallistuvat sopimuksen tekemiseen/neuvotteluihin?)*
- What are the most important/critical elements relating to co-production agreements? Why?  
*(Mitkä ovat merkittävimmät/kriittisimmät elementit yhteistuotantosopimuksissa? Miksi?)*
- Put the key elements of a co-production agreement in order of importance. See the list.  
*(Mikä on mielestänne yhteistuotantosopimusten elementtien/sopimusehtojen tärkeysjärjestys? Ks. lista.)*
- What are, why and how the most challenging elements relating to co-production agreements? On what elements the co-producing partners disagree the most?  
*(Mitkä ovat, miksi ja miten haastavimmat/hankalimmat elementit yhteistuotantosopimuksissa? Mistä on eniten erimielisyyttä?)*
- What kind of uncertainties relate to co-production agreements? How the uncertainties influence such co-production agreements?  
*(Mitä epävarmuustekijöitä liittyy yhteistuotantosopimukseen? Miten ne vaikuttavat yhteistuotantosopimukseen?)*
- What kind of risks relate to international film co-productions to be paid special attention to regarding co-production agreements?  
*(Mitä riskejä liittyy yhteistuotantoihin, jotka tulisi erityisesti huomioida yhteistuotantosopimuksissa?)*
- How pleased have you been with the final content of the co-production agreements? How well/poorly the content of the co-production agreements has been agreed upon? How well the content of the co-production agreement has been consistent with what has been agreed upon?  
*(Kuinka tyytyväinen olette olleet yhteistuotantosopimusten lopulliseen sisältöön? Kuinka hyvin/huonosti sopimusten sisältö on saatu sovittua? Kuinka sopimuksen sisältö vastaa sovittua?)*
- What is the value of a co-production agreement? What is the meaning of the content of a co-production agreement after the co-production agreement has been entered into?  
*(Millainen on yhteistuotantosopimuksen merkitys? Mikä on yhteistuotantosopimuksen sopimussisällön merkitys sopimuksenteon jälkeen?)*
- When the content of co-production agreements is agreed upon at more detailed level and when at more general level? What factors affect?  
*(Milloin yhteistuotantosopimusten sisältö sovitaan tarkemmin/kattavammin, milloin yleisemmin? Mitkä seikat vaikuttavat?)*

#### IV Legal Regulation

*(Juridinen sääntely)*

- How well do you know the legal regulation relating to your international film co-productions?  
*(Miten hyvin tunnette kansainvälisten yhteistuotantojenne osalta juridisen sääntelyn?)*
- How legal regulation has influenced international film co-productions and/or co-production agreements?  
*(Miten juridinen sääntely on vaikuttanut kansainvälisiin yhteistuotantoihin ja/tai yhteistuotantosopimuksiin?)*
- Has legal regulation caused any challenges/difficulties for your international film co-productions? If so, what kind of?  
*(Onko juridinen sääntely aiheuttanut kansainvälisille yhteistuotannoillenne haasteita/hankaluuksia? Jos on, millaisia?)*
- Has there been any benefits/help for your international film co-productions resulting from legal regulation?  
*(Onko juridisesta sääntelystä ollut hyötyä/apua kansainvälisissä yhteistuotannoissanne?)*

#### A list of elements/contractual provisions of co-production agreements

*(Lista yhteistuotantosopimuksen elementeistä/sopimusehdoista)*

Please put the elements of co-production agreements in order of importance (the most important is number 1 and the least important is number 16):

*(Järjestä elementit tärkeysjärjestykseen 1-16 (tärkein 1, vähiten tärkein 16))*

- \_\_\_ Film/production specifications
- \_\_\_ Contributions of the co-producing partners
- \_\_\_ Production schedule
- \_\_\_ Budget
- \_\_\_ Financing plan & cash flow
- \_\_\_ Rights clearance (script, music, etc.)
- \_\_\_ Copyright of the film & secondary rights
- \_\_\_ Commercial exploitation & distribution of the film
- \_\_\_ Materials & the delivery
- \_\_\_ Profit participation/sharing, recoupment & collection of revenues
- \_\_\_ Insurances
- \_\_\_ Credits (on screen)
- \_\_\_ Confidentiality
- \_\_\_ Termination
- \_\_\_ Assignment of the agreement
- \_\_\_ Applicable law & dispute resolution

\_\_\_\_\_  
\_\_\_\_\_

## **APPENDIX 2**

## QUALITATIVE INTERVIEWS OF THE FINNISH FILM INDUSTRY

Production company	Interviewees	Dates of interview	International co-productions (the year of premiere) (2000-2008)	Countries involved	Status of the Finnish production company
<b>Blind Spot Pictures Oy</b>	Tero Kaukomaa	30.11.2006	Jade Warrior (2006)	FI, NL, CN, EE	delegate producer
		30.10.2008	Producing Adults (2004)	FI, SE	delegate producer
			The Third Wave (2003)	SE, FI	minority co-producer
			The Geography of Fear (2000)	FI, DK, DE	delegate producer
			Dancer in the Dark (2000)	DK, DE, NL, IT, US, GB, FR, SE, FI, IS, NO	minority co-producer
<b>Cinemaker Oy</b>	Hannu Tuomainen	19.8.2008	Niko & The Way to the Stars (2008)	FI, DE, DK, IE	delegate producer
<b>DO Films Oy</b>	Anna Heiskanen	19.1.2006	My Friend Henry (2004)	FI, DE	delegate producer
<b>Edith film Oy</b>	Liisa Penttilä	29.11.2006	Manderlay (2005)	DK, SE, NL, FR, DE, GB, NO, FI	minority co-producer
		24.6.2008	Dogville (2003)	DK, SE, NL, FR, DE, GB, NO, FI	minority co-producer
<b>Helsinki-filmi Oy</b>	Aleksi Bardy	3-7.2008	Sunstorm (2008)	SE, FI	minority co-producer
			Tears of April (2008)	FI, DE, GR	delegate producer
			Seven Millionaires (2006)	SE, FI	minority co-producer
<b>Juonifilmi Oy</b>	Jarkko Hentula	21.11.2008	Arm-The Knight Templar (2007)	SE, GB, DK, NO, FI, DE	minority co-producer
			That Special Summer (2007)	SE, FI	minority co-producer
<b>Border Productions Oy</b>			The Border 1918 (2007)	FI, RU	delegate producer

<b>Kinoproduction Oy</b>	Claes Olsson	2.4.2009	Mystery of the Wolf (2006) Elina-As if I Wasn't There (2003) The Handcuff King (2002) Kites over Helsinki (2001)	FI, GB SE, FI FI, SE FI, SE	delegate producer minority co-producer delegate producer delegate producer
<b>Making Movies Oy</b>	Kaarle Aho	1.7.2008	Crossing Dates (2008) Black Ice (2007)	RO, FI FI, DE	minority co-producer delegate producer
<b>Matila Röhr Nordisk Oy</b>	Marko Röhr	3.2.2009	Quest for a Heart (2007) Georg (2007) Mother of Mine (2005) 9th Legion (2005) Names in Marble (2002)	FI, DE, GB, RU EE, FI, RU FI, SE FI, RU, UA EE, FI	delegate producer minority co-producer delegate producer delegate producer minority co-producer
<b>Solar Films Oy</b>	Markus Selin & Jukka Helle	2.7.2008	Dark Floors (2008) Astrópía (2007) Eleven Men Out (2005) Popular Music (2004) 101 Reykjavík (2000)	FI, IS IS, GB, FI IS, FI, GB SE, FI IS, DK, FR, NO, DE, FI	delegate producer minority co-producer minority co-producer minority co-producer minority co-producer

Marianna Films Oy not available for an interview

Sputnik Oy refused to give an interview

Country codes:

China = CN, Denmark = DK, Estonia = EE, Finland = FI, France = FR, Germany = DE, Greece = GR, Iceland = IS, Ireland = IE, Italy = IT  
Netherlands = NL, Norway = NO, Romania = RO, Russia = RU, Sweden = SE, Ukraine = UA, United Kingdom = GB, United States = US





## **APPENDIX 3**

## KEY WEB PAGES AND WEB DATABASES

The European Audiovisual Observatory

<http://www.obs.coe.int>

The Finnish legislation

<http://www.finlex.fi>

The European Union law

<http://eur-lex.europa.eu>

United Nations Treaty Series

<http://treaties.un.org>

Eurimages

<http://www.coe.int/eurimages>

The MEDIA Programme

<http://ec.europa.eu/media>

Nordisk Film & TV Fond

<http://www.nordiskfilmogtvfond.com>

The Finnish Film Foundation

<http://www.ses.fi>

POEM Foundation

<http://www.poem.fi>

Ministry of Education and Culture

<http://www.minedu.fi>

## **APPENDIX 4**



COUNCIL  
OF EUROPE  
CONSEIL  
DE L'EUROPE

European Treaty Series - No. 147

EUROPEAN CONVENTION ON  
CINEMATOGRAPHIC CO-PRODUCTION

Strasbourg, 20.X.1992

2 *E.T.S. 147 – Cinematographic Co-production, 20.X.1992*

Preamble

The member States of the Council of Europe and the other States party to the European Cultural Convention, signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members in order, in particular, to safeguard and promote the ideals and principles which form their common heritage;

Considering that freedom of creation and freedom of expression constitute fundamental elements of these principles;

Considering that the defence of cultural diversity of the various European countries is one of the aims of the European Cultural Convention;

Considering that cinematographic co-production, an instrument of creation and expression of cultural diversity on a European scale, should be reinforced;

Determined to develop these principles and recalling the recommendations of the Committee of Ministers on the cinema and the audiovisual field, and particularly Recommendation No. R (86) 3 on the promotion of audiovisual production in Europe;

Acknowledging that the creation of the European Fund for the Support of Co-production and Distribution of Creative Cinematographic and Audiovisual Works, Eurimages, meets the concern encouraging European cinematographic co-production and that a new driving force has thus been given to the development of cinematographic co-productions in Europe;

Resolved to achieve this cultural objective thanks to a common effort to increase production and define the rules which adapt themselves to European multilateral cinematographic co-productions as a whole;

Considering that the adoption of common rules tends to decrease restrictions and encourage European co-operation in the field of cinematographic co-production,

Have agreed as follows:

Chapter I – General provisions

Article 1 – Aim of the Convention

The Parties to this Convention undertake to promote the development of European cinematographic co-production in accordance with the following provisions.

Article 2 – Scope

- 1 This Convention shall govern relations between the Parties in the field of multilateral co-productions originating in the territory of the Parties.
- 2 This Convention shall apply:
  - a to co-productions involving at least three co-producers, established in three different Parties to the Convention; and

- b to co-productions involving at least three co-producers established in three different Parties to the Convention and one or more co-producers who are not established in such Parties. The total contribution of the co-producers who are not established in the Parties to the Convention may not, however, exceed 30% of the total cost of the production.

In all cases, this Convention shall only apply on condition that the co-produced work meets the definition of a European cinematographic work as defined in Article 3, paragraph 3, below.

- 3 The provisions of bilateral agreements concluded between the Parties to this Convention shall continue to apply to bilateral co-productions.

In the case of multilateral co-productions, the provisions of this Convention shall override those of bilateral agreements between Parties to the Convention. The provisions concerning bilateral co-productions shall remain in force if they do not contravene the provisions of this Convention.

- 4 In the absence of any agreement governing bilateral co-production relations between two Parties to this Convention, the Convention shall also apply to bilateral co-productions, unless a reservation has been made by one of the Parties involved under the terms of Article 20.

#### Article 3 – Definitions

For the purposes of this Convention:

- a the term “cinematographic work” shall mean a work of any length or medium, in particular cinematographic works of fiction, cartoons and documentaries, which complies with the provisions governing the film industry in force in each of the Parties concerned and is intended to be shown in cinemas;
- b the term “co-producers” shall mean cinematographic production companies or producers established in the Parties to this Convention and bound by a co-production contract;
- c the term “European cinematographic work” shall mean a cinematographic work which meets the conditions laid down in Appendix II, which is an integral part of this Convention;
- d the term “multilateral co-production” shall mean a cinematographic work produced by at least three co-producers as defined in Article 2, paragraph 2, above.

### Chapter II – Rules applicable to co-productions

#### Article 4 – Assimilation to national films

- 1 European cinematographic works made as multilateral co-productions and falling within the scope of this Convention shall be entitled to the benefits granted to national films by the legislative and regulatory provisions in force in each of the Parties to this Convention participating in the co-production concerned.

- 2 The benefits shall be granted to each co-producer by the Party in which the co-producer is established, under the conditions and limits provided for by the legislative and regulatory provisions in force in that Party and in accordance with the provisions of this Convention.

#### Article 5 – Conditions for obtaining co-production status

- 1 Any co-production of cinematographic works shall be subject to the approval of the competent authorities of the Parties in which the co-producers are established, after consultation between the competent authorities and in accordance with the procedures laid down in Appendix I. This appendix shall form an integral part of this Convention.

- 2 Applications for co-production status shall be submitted for approval to the competent authorities according to the application procedure laid down in Appendix I. This approval shall be final except in the case of failure to comply with the initial undertakings concerning artistic, financial and technical matters.

- 3 Projects of a blatantly pornographic nature or those that advocate violence or openly offend human dignity cannot be accorded co-production status.

- 4 The benefits provided by co-production status shall be granted to co-producers who are deemed to possess adequate technical and financial means, and sufficient professional qualifications.

- 5 Each Contracting State shall designate the competent authorities mentioned in paragraph 2 above by means of a declaration made at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession. This declaration may be modified at any later date.

#### Article 6 – Proportions of contributions from each co-producer

- 1 In the case of multilateral co-production, the minimum contribution may not be less than 10% and the maximum contribution may not exceed 70% of the total production cost of the cinematographic work. When the minimum contribution is less than 20%, the Party concerned may take steps to reduce or bar access to national production support schemes.

- 2 When this Convention takes the place of a bilateral agreement between two Parties under the provisions of Article 2, paragraph 4, the minimum contribution may not be less than 20% and the largest contribution may not exceed 80% of the total production cost of the cinematographic work.

#### Article 7 – Rights of co-producers

- 1 The co-production contract must guarantee to each co-producer joint ownership of the original picture and sound negative. The contract shall include the provision that this negative shall be kept in a place mutually agreed by the co-producers, and shall guarantee them free access to it.
- 2 The co-production contract must also guarantee to each co-producer the right to an internegative or to any other medium of duplication.

**Article 8 – Technical and artistic participation**

- 1 The contribution of each of the co-producers shall include effective technical and artistic participation. In principle, and in accordance with international obligations binding the Parties, the contribution of the co-producers relating to creative, technical and artistic personnel, cast and facilities, must be proportional to their investment.
- 2 Subject to the international obligations binding the Parties and to the demands of the screenplay, the technical and craft team involved in filming the work must be made up of nationals of the States which are partners in the co-production, and post-production shall normally be carried out in these States.

**Article 9 – Financial co-productions**

- 1 Notwithstanding the provisions of Article 8, and subject to the specific conditions and limits laid down in the laws and regulations in force in the Parties, co-productions may be granted co-production status under the provisions of this Convention if they meet the following conditions:
  - a include one or more minority contributions which may be financial only, in accordance with the co-production contract, provided that each national share is neither less than 10% nor more than 25% of the production costs;
  - b include a majority co-producer who makes an effective technical and artistic contribution and satisfies the conditions for the cinematographic work to be recognised as a national work in his country;
  - c help to promote a European identity; and
  - d are embodied in co-production contracts which include provisions for the distribution of receipts.
- 2 Financial co-productions shall only qualify for co-production status once the competent authorities have given their approval in each individual case, in particular taking into account the provisions of Article 10 below.

**Article 10 – General balance**

- 1 A general balance must be maintained in the cinematographic relations of the Parties, with regard both to the total amount invested and the artistic and technical participation in co-production cinematographic works.
- 2 A Party which, over a reasonable period, observes a deficit in its co-production relations with one or more other Parties may, with a view to maintaining its cultural identity, withhold its approval of a subsequent co-production until balanced cinematographic relations with that or those Parties have been restored.

**Article 11 – Entry and residence**

In accordance with the laws and regulations and international obligations in force, each Party shall facilitate entry and residence, as well as the granting of work permits in its territory, of technical and artistic personnel from other Parties participating in a co-production. Similarly, each Party shall permit the temporary import and re-export of equipment necessary to the production and distribution of cinematographic works falling within the scope of this Convention.

**Article 12 – Credits of co-producing countries**

- 1 Co-producing countries shall be credited in co-produced cinematographic works.
- 2 The names of these countries shall be clearly mentioned in the credit titles, in all publicity and promotion material and when the cinematographic works are being shown.

**Article 13 – Export**

When a co-produced cinematographic work is exported to a country where imports of cinematographic works are subject to quotas, and one of the co-producing Parties does not have the right of free entry for his cinematographic works to the importing country:

- a the cinematographic work shall normally be added to the quota of the country which has the majority participation;
- b in the case of a cinematographic work which comprises an equal participation from different countries, the cinematographic work shall be added to the quota of the country which has the best opportunities for exporting to the importing country;
- c when the provisions of sub-paragraphs a and b above cannot be applied, the cinematographic work shall be entered in the quota of the Party which provides the director.

**Article 14 – Languages**

When according co-production status, the competent authority of a Party may demand from the co-producer established therein a final version of the cinematographic work in one of the languages of that Party.

**Article 15 – Festivals**

Unless the co-producers decide otherwise, co-produced cinematographic works shall be shown at international festivals by the Party where the majority co-producer is established, or, in the case of equal financial participation, by the Party which provides the director.

**Chapter III – Final provisions****Article 16 – Signature, ratification, acceptance, approval**

- 1 This Convention shall be open for signature by the member States of the Council of Europe and the other States party to the European Cultural Convention which may express their consent to be bound by:
  - a signature without reservation as to ratification, acceptance or approval; or

- b signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

- 2 Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

#### Article 17 – Entry into force

- 1 The Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five States, including at least four member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of Article 16.

- 2 In respect of any signatory State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of signature or of the deposit of the instrument of ratification, acceptance or approval.

#### Article 18 – Accession of non-member States

- 1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any European State not a member of the Council of Europe as well as the European Economic Community to accede to this Convention, by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe, and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.

- 2 In respect of any acceding State or of the European Economic Community, in the event of its accession, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

#### Article 19 – Territorial clause

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.

- 2 Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

- 3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

#### Article 20 – Reservations

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that Article 2, paragraph 4, does not apply to its bilateral co-production relations with one or more Parties. Moreover, it may reserve the right to fix a maximum participation share different from that laid down in Article 9, paragraph 1.a. No other reservation may be made.

- 2 Any Party which has made a reservation under the preceding paragraph may wholly or partly withdraw it by means of a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall take effect on the date of receipt of such notification by the Secretary General.

#### Article 21 – Denunciation

- 1 Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

- 2 Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.

#### Article 22 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council, as well as any State and the European Economic Community which may accede to this Convention or may be invited to do so, of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Convention in accordance with Articles 17, 18 and 19;
- d any declaration made in accordance with Article 5, paragraph 5;
- e any denunciation notified in accordance with Article 21;
- f any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, this 2nd day of October 1992, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to the States mentioned in Article 16, paragraph 1, as well as to any State and to the European Economic Community which may be invited to accede to this Convention.

Appendix I – Application procedure

In order to benefit from the provisions of this Convention, the co-producers established in the Parties must, two months before shooting commences, submit an application for co-production status and attach the documents listed below. These documents must reach the competent authorities in sufficient number for them to be communicated to the authorities of the other Parties at the latest one month before shooting commences.

- a copy of the contract for the purchase of the copyright or any other proof of purchase of the copyright for the commercial exploitation of the work;
- a detailed script;
- a list of the technical and artistic contributions from each of the countries involved;
- an estimate and a detailed financing plan;
- a production schedule of the cinematographic work;
- the co-production contract made between the co-producers. This contract must include clauses providing for the distribution of receipts or territories between the co-producers.

The application and other documents shall be presented, if possible, in the language of the competent authorities to which they are submitted.

The competent national authorities shall send each other the application and attached documentation once they have been received. The competent authority of the Party with the minority financial participation shall not give its approval until the opinion of the Party with the majority financial participation has been received.

Appendix II

- 1 A cinematographic work qualifies as European in the sense of Article 3, paragraph 3, if it achieves at least 15 points out of a possible total of 19, according to the schedule of European elements set out below.
- 2 Having regard to the demands of the screenplay, the competent authorities may, after consulting together, and if they consider that the work nonetheless reflects a European identity, grant co-production status to the work with a number of points less than the normally required 15 points.

European elements	Weighting Points
Creative group	
Director	3
Scriptwriter	3
Composer	1
	7
Performing group	
First role	3
Second role	2
Third role	1
	6
Technical craft group	
Cameraman	1
Sound recordist	1
Editor	1
Art director	1
Studio or shooting location	1
Post-production location	1
	6

N.B.

- a First, second and third roles are determined by number of days worked.
- b So far as Article 8 is concerned, "artistic" refers to the creative and performing groups, "technical" refers to the technical and craft group.





## European Convention on Cinematographic Co-Production (ETS no. 147)

### *Explanatory Report*

European cultural co-operation in the cinema field takes place primarily through co-productions. In these joint efforts to support creation (for a long time exclusively bilateral, although now increasingly multilateral), the rules governing state support for film production are not always the same. The main objectives of this convention are to, minimise these differences and to harmonise multilateral relations between states when they decide to co-produce a film.

Designed to encourage the development of film co-productions in Europe, the convention tries to simplify procedures and production on the basis of criteria established by the Eurimages fund (a European fund set up within the framework of the Council of Europe in 1988 in order to support co-productions and the distribution of film and audiovisual productions). It also constitutes a step forward in lowering the threshold of financial participation in co-productions and also, in permitting financial co-productions, provided these promote European identity. This requirement concerning identity is in some respects the guiding principle of the convention, which is inspired by a versatile but unified vision of European film production.

### Introduction

Cinematographic production in Europe is essentially an activity carried out on a national basis. Linguistic and cultural differences have resulted in each nation creating its own cinema, each with its own clearly defined characteristics. The differing traditions typifying Italian, British or French cinema, for example, are readily identifiable.

This situation has led to the conception of films targeted first and foremost at national markets. Of course, the quality and value of some productions has resulted in their being more widely distributed. Neo-realism, the great Italian comedies, Nouvelle Vague and the British Free Cinema, to cite but a few examples, have been hailed far beyond the frontiers of their countries of origin. They were, however, produced with financing that took account principally of national markets.

The development of television caused a marked drop in cinema attendance during the 1960s and 1970s. The natural source of film financing, from box-office takings, became less and less reliable. A considerable increase in production costs further increased the difficulties. With national markets often no longer sufficient to finance productions - unlike the United States domestic market, which has a population of 250 million, the great majority of whom speak the same language - European film producers turned to co-productions. These require a prior agreement between states, each of which accords its nationality to films produced by both countries. In this way, a production can take advantage of the benefits granted to national works and attract private or public financing in both countries. The first agreement of this type, which set the pattern, was signed between Italy and France. Since then a large number of agreements have been drawn up between European film-producing countries.

In its classic form, co-production has undoubtedly helped European cinema to survive. It does, however, have its limitations, and may lead to undesirable side-effects. Since it calls for technical

and artistic participation commensurate with financing, it has led to the creation of artificially conceived works in which actors and technicians are some-times chosen more for their nationality than for reasons connected with the coherence of the film.

While appropriate for bilateral relations, co-production agreements have also been used to set up co-productions involving more than two countries. In fact, most such agreements expressly provide for that possibility. However, bilateral agreements are not standardised, and leave room for disparities, with the danger that one of the co-producers may be offered less favourable terms than the others.

With the setting up of the Council of Europe Eurimages support fund, the need for harmonisation has become urgent. Intended to support cinematographic works co-produced by partners established in at least three countries, the Eurimages fund has led to a substantial increase in multilateral co-production, while establishing conditions different from those contained in co-production agreements. For example, Eurimages requires only 10% funding by one of the partners, whereas most co-production agreements require 20% or even 30% participation.

It has thus become necessary to adopt rules adapted to the whole range of European multilateral co-productions, while not of course calling into question the existing bilateral relations. A convention seems to be the most appropriate form of legal instrument for this purpose.

In fact, a European convention has the advantage of providing a common legal basis, governing the multilateral cinematographic relations of all the States Parties to the convention. In setting out conditions for obtaining co-production status applicable to all State Parties, such a European convention enables the drawbacks which would result from many different multilateral intergovernmental agreements to be dealt with, drawbacks deriving as much from the disparity of the stipulations laid down by these agreements, as from the complexity of the legal relations which would ensue, in particular, with regard to States Parties to several bilateral agreements setting out different co-production conditions. A single contractual instrument constitutes, an important means

of development and promotion of co-productions in Europe and simplifies cinematographic relations between the producing States. In this respect, it should be noted that the European Convention on Cinematographic Co-production has an extensive geographic field of application, being open to signature by the member states of the Council of Europe and the other States which are Parties to the European Cultural Convention, as well as to the accession of European non-member States.

Furthermore, the possibility of association with countries such as Canada, which have observer status to the Parliamentary Assembly of the Council of Europe, and which have established numerous cinematographic agreements with European countries, with whom they have close cultural links, is under consideration.

A number of European States have not as yet concluded mutual co-production agreements. It was considered a good idea to allow for bilateral application of the terms of the convention by those States wishing to do so. In according to the Convention, those States thus enable their producers to engage in co-productions with partners from any other State that has ratified the Convention.

Finally, by authorising purely financial co-productions, that is, co-productions without artistic and technical participation by the minority co-producers, the Convention provides a response to traditional co-productions, in which the proportions of contributions by different partners sometimes lead to what have been called "Europaddings". By leaving the majority partner free to retain full technical and artistic control over the work, this type of co-production fosters the defence of the various European countries' individual cultural identities, thereby fulfilling one of the aims set forth in the Council of Europe Cultural Convention.

## Commentaries

### Article 1 - Aim of the Convention

The purpose of this article is to define the aim of the Convention, namely, the promotion of European cinematographic co-productions.

The Parties did not wish to extend the scope of the Convention to audiovisual works because these are not normally governed by co-production agreements concluded between States. There is thus no need to harmonise the international rules concerning them.

### Article 2 - Scope

1. The Convention refers to the fact that the convention institutes rules of international law intended to govern relations between States with regard to cinematographic co-production arrangements involving producers from at least two States. The Convention may also serve as a bilateral agreement between two countries when no bilateral co-production agreement has been concluded between them and when they have not decided against making a reservation under Article 20.

It has been agreed that the words "multilateral co-productions originating in the territory of the Parties" do not imply that there exists one single certificate of origin, but one per co-producing State.

The Parties are those that are Parties to the Convention. The Convention may be invoked only by producers who are nationals of States which are Parties to the Convention. These producers must furnish proof of their origin, that is, of their establishment in one of the States Parties to the Convention.

2. When the Convention applies to a multilateral co-production, it may also include co-producers who are established in countries not Parties to the Convention, provided that the co-production involves at least three co-producers established in States Parties to the Convention and that those co-producers contribute at least 70% of the financing of the production. In order to comply with the aims set forth in Article 1 of the text, namely, the promotion of European co-productions, it seemed necessary to establish a general eligibility condition regarding the European origin of the work. The criteria used to define that origin are set forth in Article 3 and in Appendix 11, which is an integral part of the Convention.

3. In the case of a bilateral co-production, the provisions of the bilateral agreements are fully applicable. In the case of multilateral co-productions, the provisions of the bilateral agreements between States Parties to the convention are applicable only if they do not contradict the provisions of the Convention, if there is a discrepancy, the provisions of the Convention are directly applicable and override the conflicting provisions of the bilateral agreements.

### Article 3 - Definitions

a. The definition of a "cinematographic work" reproduces the definition generally adopted in existing co-production agreements. Given the distribution difficulties in Europe, the fact that a cinematographic co-production is not screened in a cinema does not cause it to lose its co-production status.

b. It is for each Party to define the status of a producer in accordance with the rules laid down for the purpose by that Party. As a general rule, the production enterprise must be specifically engaged in the production of cinematographic works, which excludes, *inter alia*, financial institutions.

### Article 4 - Assimilation to national films

1. The chief aim of a co-production agreement is to confer on cinematographic works that can lay claim to it the nationality of each of the partners in the co-production. Works may thus benefit from national aids accorded to the cinematographic industry and the exhibition of films. They may also benefit from national rules regarding origin where television broadcasting is concerned. Co-production agreements also make it possible to extend the benefit of tax exemptions granted to these works in certain countries. Co-production works are thus placed on an equal footing with national works with regard to access to the advantages available to the latter.

2. Co-production works are, however, subject to the national rules governing cinematographic production and access to aids in the various countries that are partners in the production. By virtue of the non-discrimination rule, a co-production, even where it is a minority co-production, cannot enjoy a status different from a majority co-production.

However, the application of the above-mentioned national rules implies prior proof of the conformity with the provisions of the convention (see Article 5) of those co-productions claiming the benefits thereof. This statement is actually the result of the convention system, which specifies the conditions in which the co-productions concerned are assimilated with national films in order that they may benefit from the advantages provided by the domestic legislation of the various partner countries involved in the co-production.

### Article 5 - Conditions for obtaining Co-production status

1.2 and 5. In accordance with the rule laid down in bilateral co-production agreements, recognition of the status of co-production requires consultation between and approval by the competent authorities of each country. The purpose of these formalities is to establish that the co-production conforms to the rules set forth in the Convention. Each party designates the competent authority to be responsible for application of the Convention. A list of such authorities will be transmitted to the Secretary General of the Council of Europe and be regularly up-dated by the Parties.

4. As regards recognition of the producers qualifications, it should be borne in mind that these may be officially recognised in some countries (by means of a system of professional identity cards or lists), but that this is not usually the case. The purpose of the provision is above all to prevent producers whose professional incompetence is commonly acknowledged and amateur producers from making co-productions. Companies existing in name only ("letterbox" companies), and set up merely to help with the financial backing of a given multilateral project, should also be excluded.

### Article 6 - Proportions of contributions from each co-producer

1. The agreements currently in force provide for levels of participation by minority countries ranging from 20% to 30%. The Eurimages fund, on the other hand, provides for a participation level as low as 10%. However, this possibility does not entitle the co-production to be accorded national status if the threshold adopted for Eurimages is lower than that established in the agreements. In view of the larger number of partners involved in multilateral co-productions, which necessarily entails a concomitant lowering of participation by the co-producers, it was considered appropriate to adopt a minimum threshold of 10%, which will also make it possible to bring the regulations into line with the practice adopted at Eurimages. On the other hand, a participation lower than 10% cannot be described as a co-production, usually merely denoting a pre-purchase. With a view to preserving the status of co-production, which genuinely brings together several partners in a joint work, it was proposed that the majority share should be limited to 70%. Between 70% and 80%, the majority participation threshold continues to be acceptable in the case of a bilateral co-production, but rules out the involvement of a third co-producer.

However, in the case of a minority participation lower than the traditional threshold of 20%, with a view to resolving the problems that arise particularly in countries where automatic aid is granted to

the co-producer in full, irrespective of the national share in the co-production, it is provided that the state of origin of the minority co-producer may take steps to limit access to national mechanisms for aid to co-production.

2. Where bilateral co-productions are concerned, 20% and 80% are the percentages most usually recognised in the agreements currently in force.

#### *Article 7 - Rights of co-producers*

1. Since the object of the co-production is to share the rights over the original negative, the negative must belong to each of the co-producers. In order to preserve the rights of co-ownership implied by co-production, each co-producer must be able to have free access to the negative, so as to be able to make the copies necessary for the exploitation of the work.

2. In order to facilitate distribution, it is often necessary for the co-producer to have, for his own use, an internegative or any other medium which enables the work to be reproduced. That right is sometimes relinquished for financial reasons. In that case, agreement must be reached between the various co-producers regarding the place where the original negative is to be kept.

#### *Article 8 - Technical and artistic participation*

1. Given that the Convention grants the co-produced work the nationalities of the various countries that are partners in the co-production, that recognition of nationality must be reflected in a genuine participation by technical and artistic staff of those countries in the making of the film. Such participation makes it possible to create a link between the co-produced work and the countries whose nationality it will acquire. That participation must logically be commensurate with the size of each partner countries share of the co-production. It is clear that where the financial participation fails to be proportional to the artistic and technical participation the competent authorities may either refuse to grant co-production status to the project or withdraw their provisional agreement. That rule is to be understood in the light of the international obligations assumed by the various States Parties to the Convention, and in particular, the rules regarding free movement of workers set forth in the Treaty of Rome. The content of the terms, both artistic and technical, is defined in Appendix II.

2. The obligation, except as otherwise provided, to use technicians and technical industries established in the countries that are partners in the co-production ensures that it will not be possible to use workers or technical industries enjoying a lesser degree of protection, outside the framework of a co-production. Technicians legally established in the countries that are partners in the co-production are considered to be nationals of these States.

As far as post-production is concerned, this may not be carried out in a country which is not a partner in the co-production except in the absence of adequate technical facilities in those countries.

A State may assimilate to its residents the residents of countries belonging to its cultural sphere.

#### *Article 9 - Financial co-productions*

1. While the principle, referred to in Article 8, of a technical and artistic contribution commensurate with the financial investment remains legitimate, concerns as to the identity and financing of national works have led to the retention of an alternative method of editing. Quite frequently the principle of an artistic and technical contribution commensurate with the share in financing may lead to choices that take greater account of the requirements of the co-production agreement than of the need for artistic coherence. Furthermore, the growing financing needs of European productions mean that co-production is becoming a model generally adopted even in the case of projects whose inspiration derives from just one country. In order to take account of the need to respect the cultural identity of each of the States Parties and the coherence of the

producers' artistic choices, it has been proposed that the financial co-production model, which at present is recognised only by a very small number of bilateral agreements, should become the general model. Recourse to the provisions governing financial co-productions does not confer exemption from the conditions set forth in Article 5, paragraph 4 concerning the involvement of bona fide co-producers. Furthermore, and particularly where the financial co-production gives full entitlement to the aids to traditional co-productions available at national level, the conditions regarding an overall balance set forth in Article 10 below take on particular importance.

a. With regard to the particular requirements for financial co-productions, it is considered that the maximum financial participation should not exceed 25%, since it can be argued that beyond that threshold the financial contribution of the minority producer is such that technical and artistic production will follow as a matter of course. A party is free, however, to derogate from this rule under the conditions laid down in Article 20.1.

b. It also follows from the text that only minority participations may be granted exemption from the rule set forth in Article 8 concerning artistic and technical participation. As the purpose of financial co-productions is to ensure respect for cultural identities, the artistic and technical participation by majority producers is in fact logically larger than the co-producers' shares in the co-production.

d. Furthermore, any financial co-production must be able to present co-production contracts, providing for the sharing of income between all the co-producers. This self-evident provision is particularly necessary in the case of financial co-production, so as to avoid participation by purely financial institutions that do not participate in the risks and profits of the production. Where these conditions are fulfilled, financial co-productions may prove a particularly appropriate instrument for the development of European cultural identities. In fact, by mobilising substantial financial resources from several European countries while, respecting the national identity of the majority producer, who is the real artistic driving force behind the work, they will make a real contribution to an expression of national cultures that are authentic.

2. The conditions for authorisation for financial Co-productions (which vary according to the case) may give rise to individual agreements between States.

#### *Article 10 - General balance between Parties*

1 - The objective of the Convention is the development of the cinematographic industry in each of its States Parties. The development of co-productions is one of the most effective and appropriate instruments for that purpose. However, the development of traditional or financial co-productions may in some cases lead to a lack of balance between a country and one or more of its partners over a given period of time. Since in most countries of Europe the cinematographic industry receives substantial financing from public funds, the concern of states to preserve their own culture is a legitimate one. That is why it was considered necessary to introduce into the text the concept of an overall balance between Parties, which must be applicable to traditional co-productions and financial co-productions alike. It cannot be part of the intention of the Convention that a national fund should be used to contribute to other States' cinematographic undertakings where insufficient reciprocity exists. States must necessarily be allowed some latitude in interpretation of the concept of reciprocity while bearing in mind that the spirit of the Convention calls for a flexible and open assessment of that principle.

2. Where a Party observes a deficit in its co-production relations with one or more other Parties, that deficit may take several forms:

- a State may observe a manifest imbalance between the flow of national investment to finance foreign films and the flow of foreign investment to finance its own film industry;

- it may also observe an imbalance over a given period between the number of majority co-productions and the number of minority co-productions with one or more partner countries;

- finally, the imbalance may take the form of a lack of correlation between use of directors and artistic and technical staff on the one hand, and the number of majority and minority co-productions on the other.

However, the competent authority should refuse to grant the status of co-production only as a last resort, after the usual channels of consultation between the Parties concerned have been exhausted.

#### *Article 14 - Languages*

With regard to the language of the original version, it is obvious that the spirit of the Convention, whose aim is to promote the emergence of co-productions reflecting the European identity, which depends on the expression of an authentic national identity, is clearly in favour of the use of the language culturally suited to the work.

Choosing to shoot the film in a language unrelated to the demands of the screenplay for purely commercial reasons in the hope - frequently belied by the facts - of penetrating the "world market" is patently contrary to the real aim of the Convention.

However, it has not proved possible to clearly formalise this requirement in the Convention in the form of a legal rule. The reason for this is that the language deemed as culturally appropriate may be defined in several ways. It is generally defined as the language of one of the countries participating in the co-production; but in a tripartite co-production, if the language used is that of a co-producer whose stake is only 10% and which has provided neither the director, nor the actors, nor the story-line, this is clearly artificial. Formalising the requirement to use the language of the co-producing countries may, in these circumstances, encourage the mounting of "ad hoc" co-productions.

In fact, the most suitable original version language seems to be what might be termed the "natural language of the narrative"; the language which the characters would naturally speak according to the demands of the screenplay. The language of the narrative, defined in this way, may be completely unrelated to the financial set-up adopted by the co-production, which means that there can be no legal definition of that language.

For that reason, it seemed preferable to leave the States Parties to the Convention entirely free on this point, so that they could define their own expectations in this matter.

Consequently, Article 14 merely provides that in order to enable a film to be distributed in all the countries which co-produced it, the countries concerned may require presentation of a final copy in their own languages, either dubbed or sub-titled, depending on each country's cultural customs. In accordance with the provisions of Article 4, Article 14 does not exhaust the possibility for a State Party to the Convention to lay down linguistic rules regarding access to certain aid systems, provided that such arrangements are not discriminatory in relation to the nationality of the film.

#### *Articles 16 to 22*

The final provisions of the Convention draw upon the model final clauses for Conventions and Agreements concluded within the Council of Europe, as adopted by the Committee of Ministers.

In accordance with Articles 16 and 18, the Convention is open for signature by member States of the Council of Europe and the other States Parties to the European Cultural Convention, as well as for accession by non-member European States. The geographical scope of the Convention

thus reflects the latter's purpose, namely the development of European cinematic co-productions.

Only two reservations are permitted by Article 20, one with a view to non-application of Article 4, paragraph 2, of the Convention to the bilateral co-production relations of the State making the reservation with one or more Parties, the other allowing a State to fix the maximum limit of minority participation restricted to the financial contribution in a manner other than the one foreseen in Article 9, paragraph 1 a.

#### *Appendix 1*

Appendix 1 details those practices, arising from the provisions of the bilateral agreements, that have given practical proof that they are particularly well-suited to their objective.

#### *Appendix II*

Given that the aim of this Convention is the creation of European cinematographic works, it was considered necessary to define that concept as objectively as possible, adopting as the criterion the European origin of the participants in the co-production. This is interpreted in the broad sense as referring to the establishment of the collaborators in the work in one of the countries of the geographical territory of Europe, without discriminating between countries that are signatories to the convention and the other European countries.

The table of points contained in Appendix II is not intended to exempt the co-produced work from the provisions of Article 8 regarding the technical and artistic participation of the various partners in the co-production. It merely constitutes a necessary, but not a sufficient, condition for eligibility for the status of co-production.

The appendix is divided into three groups of more or less equal importance, though producers are not mentioned, since, under the provisions of Article 2 of the Convention, the European co-produced work is of necessity controlled by co-producers established in one of the Parties to the Convention. The table of points breaks down the collaborators in the work into three units: the creative unit, the performing unit and the technical unit. In the first unit, equal importance is accorded to script-writing and direction. As regards the script, it goes without saying that the three points may be distributed, on the basis of the nationality of each, between the creator of the original idea, the adaptor, the scriptwriter and the writer of the dialogues. As regards the performing unit, calculation of the number of points is based on actual days present during the shooting. Finally, as regards the technical craft group, the point is allocated to the studio, the location being taken into consideration only where a studio is not used.

## **APPENDIX 5**

SUOMEN SÄÄDÖSKOKOELMAN  
SOPIMUSSARJA

ULKOVALTAIN KANSSA TEHDYT SOPIMUKSET

1999 Julkaistu Helsingissä 1 päivänä huhtikuuta 1999 N:o 24

N:o 23

meriturvallisuuskomitean tietoisuuteen har-  
kittavaksi ja hyväksyttäväksi,

2. tiedottaa tästä päätöslauselmasta ja sen  
mahdollisesti myöhemmin hyväksyttävistä  
muutoksista, kaikille STCW-yleissopimuk-  
sen osapuolille.

SISÄLLYS

N:o 24	Asetus Suomen hallituksen ja Kanadan hallituksen välisen elokuva- ja televisioalan yhteis- tuotantotoiminnan voimaansaatamisesta .....	Sivu 381
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VIII LUKU

VAHDINTOJA KOSKEVAT  
VAATIMUKSET

Osasto A—VIII/1

Vahtikuntoisuus

1. Kaikille henkilöille, jotka määrätään  
hoitamaan vahtipäällikön tehtäviä tai osallis-  
tumaan vahdintuotoon miehistön jäsenenä, on  
annettava vähintään kymmenen tuntia lepoa  
24 tunnin jakson aikana.

2. Lepotunnit voidaan jakaa korkeintaan  
kahteen jaksoon, joista toinen on vähintään  
kuusi tuntia.

3. 1 ja 2 kappaleessa mainittuja lepotunte-  
ja koskevia vaatimuksia ei tarvitse soveltaa  
häätälänteessä tai harjoitusten aikana tai  
muissa ylitsepäsemättömissä operatiivisissa  
olosuhteissa.

4. 1 ja 2 kappaleen määräyksiä poiketen  
kymmenen tunnin vähimmäisaika voidaan  
laskea kuuteen peräkkäiseen tuntiin sillä  
edellytyksellä, että se ei kestä kahta päivää  
enempää ja vähintään 70 tuntia lepoa anne-  
taan kunkin seitsemän päivän jakson aikana.

5. Viranomaiset vaativat, että vahtilistoja  
pidetään helposti saatavilla.

N:o 24

(Suomen säädöskokoelman n:o 388/1999)

Asetus

Suomen hallituksen ja Kanadan hallituksen välisen elokuva- ja televisioalan  
yhteistuotantotoiminnan voimaansaatamisesta

Annettu Helsingissä 26 päivänä maaliskuuta 1999

1. All persons who are assigned duty as  
officer in charge of a watch or as a rating  
forming part of a watch shall be provided a  
minimum of 10 hours of rest in any 24-hour  
period.

2. The hours of rest may be divided into  
no more than two periods, one of which  
shall be at least 6 hours in length.

3. The requirements for rest periods laid  
down in paragraphs 1 and 2 need not be  
maintained in the case of an emergency or  
drill or in other overriding operational con-  
ditions.

4. Notwithstanding the provisions of para-  
graphs 1 and 2, the minimum period of ten  
hours may be reduced to not less than 6  
consecutive hours provided that any such  
reduction shall not extend beyond two days  
and not less than 70 hours of rest are pro-  
vided each seven day period.

5. Administrations shall require that watch  
schedules be posted where they are easily  
accessible.

Ulkosianministeriön toimialaan kuuluvia asioita käsittelemään määrätyn ministerin esitte-  
lystä säädetään:

1 §

Tuholmassa 31 päivänä maaliskuuta 1998  
tehty Suomen hallituksen ja Kanadan halli-  
tuksen välinen elokuva- ja televisioalan yhi-  
teistuotantotoiminta, jonka tasavallan presi-  
denti on ratifioinut 29 päivänä tammikuuta  
1999 ja jonka ratifioimista koskevat nootit on  
tikuuta 1999.

2 §

Tämä asetus tulee voimaan 1 päivänä huh-  
tikuuta 1999.

Helsingissä 26 päivänä maaliskuuta 1999

Tasavallan Presidentti  
MARTTI AHTISAARI

Ministeri Pekka Haavisto

N:o 22—23, 1 arkk

PÄÄTÖKSIÄ JARI LINHALA  
OY EDITA AB, HELSINKI 1999

**SUOMEN HALLITUKSEN JA  
KANADAN HALLITUKSEN VÄLINEN  
ELOKUA- JA TELEVISIOALAN  
YHTEISTUOTANTOSOPIMUS**

**SUOMEN HALLITUS JA KANADAN  
HALLITUS** (jäljempänä "sopimuspuolet"),

KATSOVAT, että on toivottavaa luoda  
puitteet audiovisuaalisen alan suhteille ja  
erityisesti elokuva-, televisio- ja videoalan  
yhteistuotannoille;

OVAT TIETOISIA siitä, että laadukkaat  
yhteistuotannot voivat osaltaan edistää elo-  
kuva-, televisio- ja videoalan tuotanto- ja  
jaketuotantoa kummassakin maassa sekä  
kehittää maiden kulttuurista ja taloudellista  
vaihtoa;

OVAT VAKUUTTUNEITA siitä, että tä-  
mä vaihto edistää näiden kahden maan väli-  
siä suhteita;

OVAT SOPINEET seuraavasta:

**I ARTIKLA**

1. Tässä sopimuksessa "yhteistuotannolla" tarkoitetaan minkä tahansa pituista, mukaan lukien animaatio- ja dokumentti- tuotannot, filmillä, videonauhalla, videolevyllä tai millä tahansa toistaiseksi tuntemattomalla muodolla tuotettua, elokuvateattereissa, televisiossa, videokeksillä, videolevyllä tai missä tahansa toistaiseksi tuntemattomassa tai myöhemmin tunnetuksi tulevassa jakelumuodossa esitettäväksi tarkoitettua hanketta.

2. Tämän sopimuksen perusteella toteutettaville yhteistuotannoille on saatava hyväksyntä seuraavilta viranomaisilta, jäljempänä "toimivaltaiset viranomaiset":  
Suomessa: kulttuuriasiain vastaava ministeri, tai jos hän niin valtuuttaa, Suomen elokuvastudio; ja  
Kanadassa: kulttuuriministeri, tai jos hän niin valtuuttaa, Telefilm Canada.

3. Jokainen tämän sopimuksen perusteella toteutettu yhteistuotanto on tuotettava ja le-

vitetävä Suomessa ja Kanadassa voimassa olevien kansallisten säännösten ja määräysten mukaan.

4. Kummankin maan ja kummassakin maassa on pidettävä jokaista tämän sopimuksen mukaisesti tuotettua yhteistuotantoa kotimaisena tuotantona kaikissa yhteyksissä. Tämän mukaisesti jokainen tällainen yhteistuotanto on täysin oikeutettu hyödynämään kaikkia sillä hetkellä saatavilla olevia tai myöhemmin kummassakin maassa mahdollisesti säädettäviä elokuva- ja videoteknisiä tulot tuloja. Nämä etuudet tulevat kuitenkin yksinomaan sen maan tuottajalle, joka ne myöntää.

**II ARTIKLA**

Tämän sopimuksen ehtojen mukaisia etuuksia sovelletaan ainoastaan sellaisiin yhteistuotantoihin, joiden tuottajilla on hyvä tekninen organisaatio, terve rahoituspolitiikka ja tunnustettu ammatillinen asema.

**III ARTIKLA**

1. Näiden kahden maan yhteistuottajien suhteelliset osuudet voivat vaihdella kahdeksankymmentä prosentista (20 %), vähemmistöyhteistuottajan osalta, kahdeksankymmeneen prosenttiin (80 %), enemmistöyhteistuottajan osalta, kunkin yhteistuotannon talousarviossa.

2. Kunkin yhteistuottajan on osallistuttava tuotantoon sekä teknisellä että luovalla panoksella. Periaatteessa tämän osallistumisen on oltava suhteessa sijoitukseen.

**IV ARTIKLA**

1. Yhteistuotantojen tuottajien, käsikirjoittajien ja ohjaajien sekä teknisen henkilökunnan, esittävien taiteilijoiden ja muun tällaisiin yhteistuotantoihin osallistuvan tuottajan henkilökunnan on oltava Suomen tai Kanadan kansalaisia tai vakinaisesti Suomessa tai Kanadassa asuvia henkilöitä. He voivat myös olla Euroopan talousalueen jäsenvaltioiden kansalaisia sillä edellytyksellä, että Suomesta ja Kanadasta tulevan henkilöstön osallistuminen on ilmeisen merkittävää.

2. Yhteistuotannon niin vaatessa voidaan sallia muiden kuin 1 kohdassa mainittujen esittävien taiteilijoiden osallistuminen kummankin maan toimivaltaisen viranomaisen hyväksynnällä.

buted in accordance with the national legislation and regulations in force in Finland and in Canada;

4. Every co-production produced under this Agreement shall be considered to be a national production for all purposes by and in each of the two countries. Accordingly, each such co-production shall be fully entitled to take advantage of all benefits currently available to the film and video industries or those that may hereafter be decreed in each country. These benefits do, however, accrue solely to the producer of the country which grants them.

**ARTICLE II**

The benefits of the provisions of this Agreement apply only to co-productions undertaken by producers who have good technical organization, sound financial backing and recognized professional standing.

**ARTICLE III**

1. The proportion of the respective contributions of the co-producers of the two countries may vary from twenty (20%), for the minority co-producer, to eighty per cent (80%), for the majority co-producer, of the budget for each co-production.

2. Each co-producer shall be required to make an effective technical and creative contribution. In principle, this contribution shall be in proportion to his investment.

**ARTICLE IV**

1. The producers, writers and directors of co-productions, as well as the technicians, performers and other production personnel participating in such co-productions, must be Finnish or Canadian citizens, or permanent residents of Finland or Canada. They can also be nationals of the member states of the European Economic Area provided that the participation of personnel from Finland and Canada is of obvious importance.

2. Should the co-production so require, the participation of performers other than those provided for in the first paragraph may be permitted, subject to approval by the competent authorities of both countries.

## V ARTIKLA

1. Toiminnan kuvaaminen ja animaatiotyöt, kuten kuväskirjoitus, layout, key animation, liikesarjojen piirtäminen ja puhe-äänien äänitys, on periaatteessa tehtävä vuorokauden Suomessa ja Kanadassa.

2. Paikan päällä tapahtuvat ulko- ja sisäkuvaus voidaan sallia kuitenkin maassa, josta ei osallistu yhteistuotantoon (ts. muualla kuin Suomessa, Kanadassa tai Euroopan talousalueen jäsenvaltioissa), jos käsikirjoitus tai toimitus niin vaativat ja jos kuvauksin osallistuu tekijä henkilökuntaa Suomesta, Kanadasta tai Euroopan talousalueen maasta.

3. Laboratoriotyöt on tehtävä joko Suomessa, Kanadassa tai Euroopan talousalueen jäsenvaltioissa, paitsi silloin kun se on teknisesti mahdotonta, jolloin laboratoriotyöt voidaan tehdä maassa, joka ei osallistu yhteistuotantoon, kummankin maan toimivaltaisen viranomaisen valtuutuksella.

## VI ARTIKLA

1. Kummankin maan toimivaltainen viranomainen suosittelee yhteistuotantajia, joiden tuottajat ovat Suomesta, Kanadasta tai Euroopan talousalueen jäsenmaasta tai mistä tahansa maasta, jonka kanssa Suomella tai Kanadalla on virallinen yhteistuotantosopimus.

2. Vähemmistöyhteistuottajan suhteellinen osuus monenkeskisessä yhteistuotannossa ei saa olla pienempi kuin kaksikymmentä prosenttia (20 %).

3. Jokaisen yhteistuotannon vähemmistöyhteistuottajan on annettava todellinen tekeminen ja luova panos.

## VII ARTIKLA

1. Jokaisen yhteistuotannon alkuperäinen äänimateriaali on tehtävä joko suomeksi, ruotsiksi, englanniksi tai ranskaksi. Kuvaaminen millä tahansa kahdella näistä kielistä tai kahdella näillä kielillä on sallittu. Yhteistuotantoon voi sisällyä vuoropuhelua muilla kielillä käsikirjoituksen niin vaatiessa.

2. Kunkin yhteistuotannon dubbaaminen tai tekstittäminen suomeksi ja/tai ruotsiksi on tehtävä Suomessa ja ranskaksi ja/tai englanniksi Kanadassa. Kummankin maan toimivaltaisen viranomaisen on hyväksyttävä kaikki poikkeamat tästä periaatteesta.

## ARTICLE V

1. Live action shooting and animation works such as storyboards, layout, key animation, in between and voice recording must, in principle, be carried out alternately in Finland and in Canada.

2. Location shooting, exterior or interior, in a country not participating in the co-production (i.e. other than Finland, Canada or a member state of the European Economic Area) may, however, be authorized, if the script or the action so requires and if technicians from Finland, Canada or a member state of the European Economic Area take part in the shooting.

3. The laboratory work shall be done in either Finland, Canada or a member state of the European Economic Area, unless it is technically impossible to do so, in which case the laboratory work in a country not participating in the co-production may be authorized by the competent authorities of both countries.

## ARTICLE VI

1. The competent authorities of both countries also look favourably upon co-productions undertaken by producers of Finland, Canada or a member state of the European Economic Area and any country to which Finland or Canada is linked by an Official Co-Production Agreement.

2. The proportion of any minority contribution in any multi-party co-production shall be not less than twenty per cent (20%).

3. Each minority co-producer in such co-production shall be obliged to make an effective technical and creative contribution.

## ARTICLE VII

1. The original sound track of each co-production shall be made in either English, French, Finnish or Swedish. Shooting in any two, or in all, of these languages is permitted. Dialogue in other languages may be included in the co-production as the script requires.

2. The dubbing or subtitling of each co-production into French and/or English, or into Finnish and/or Swedish shall be carried out respectively in Finland or Canada. Any departures from this principle must be approved by the competent authorities of both countries.

## VIII ARTIKLA

1. Tässä sopimuksessa kahden tuotannon yhdistämistarjelyjen mukaisesti tuotettuja tuottajia voidaan pitää toimivaltaisten viranomaisten hyväksymällä yhteistuotantoina ja ne voivat saada samat etuudet. Poiketen III artiklasta kahden tuotannon yhdistämisen ollessa kyseessä kummankin maan tuottajien vastavuoroiseen osallistuminen voi rajoittua ainoastaan rahitoitukseen, sulkeematta kuitenkaan välttämättä pois taitteellista tai teknistä osuutta.

2. Jotta toimivaltaiset viranomaiset voisivat hyväksyä nämä tuotannot, niiden on täytettävä seuraavat ehdot:

a) niihin on sisällyttävä vastaavaa vastavaroista panostusta ja niissä on vallittava kokonaistapaino, mitä tulee yhdistämisestä hyötyvien tuottajien yhteistuottajien välisiin tuottojen jakamissuhteisiin;

b) yhdistetyt tuotannot on levitettävä vertailukelpoisilla ehdoilla Suomessa ja Kanadassa;

c) yhdistetyt tuotannot voidaan tuottaa joko samaan aikaan tai peräkkäin niin, että jalkimmaisessa tapauksessa ensimmäisen tuotannon valmistumisen ja toisen tuotannon aloittamisen välinen aika ei ole yli yhden (1) vuoden.

## IX ARTIKLA

1. Lukuunottamatta sitä, mitä seuraavassa kohdassa määrätään, kaikissa yhteistuotannoissa on tehtävä tuotannoissa käytetyistä lopullisista varmistus- ja kopiointimateriaaleista vähintään kaksi kopiota. Jokainen yhteistuottaja saa omistukseensa yhden kopion varmistus- ja kopiointimateriaaleista ja on oikeutettu käyttämään sitä, yhteistuottajien sopimien ehtojen mukaisesti, tehdxkseen tarvittavat kopiot. Lisäksi kullakin yhteistuottajalla tulee olla vapaa pääsy alkuperäiseen tuotantomateriaaliin noiden ehtojen mukaisesti.

2. Kummankin yhteistuottajan pyynnöstä ja sillä edellytyksellä, että kummankin maan toimivaltaisen viranomaisen sen hyväksyy, riittää ainoastaan yhden kopion tekeminen lopullisista varmistus- ja kopiointimateriaaleista niiden tuottajien osalta, jotka toimittavat varmisteet katsotavien pienen budjetin tuotannoksi. Tällaisissa tapauksissa materiaalia säilytetään enemmistöyhteistuottajan maassa. Vähemmistöyhteistuottajalla on pääsy materiaaliin koko ajan, jotta se voi tehdä

## ARTICLE VIII

1. For the present purposes, productions produced under a twinning arrangement may be considered, with the approval of the competent authorities, as co-productions and receive the same benefits. Notwithstanding Article III, in the case of a twinning arrangement, the reciprocal participation of the producers of both countries may be limited to a financial contribution alone, without necessarily excluding any artistic or technical contribution.

2. To be approved by the competent authorities, these productions must meet the following conditions:

(a) there shall be respective reciprocal investment and an overall balance with respect to the conditions of sharing the receipts of co-producers in productions benefiting from twinning;

(b) the twinned productions must be distributed under comparable conditions in Finland and in Canada;

(c) twinned productions may be produced either at the same time or consecutively, on the understanding that, in the latter case, the time between the completion for the first production and the start of the second does not exceed one (1) year.

## ARTICLE IX

1. Except as provided in the following paragraph, no fewer than two copies of the final protection and reproduction materials used in the production shall be made for all co-productions. Each co-producer shall be the owner of one copy of the protection and reproduction materials and shall be entitled to use it, in accordance with the terms and conditions agreed upon by the co-producers, to make the necessary reproductions. Moreover, each co-producer shall have access to the original production material in accordance with those terms and conditions.

2. At the request of both co-producers and subject to the approval of the competent authorities in both countries, only one copy of the final protection and reproduction material need be made for those productions which are qualified as low budget productions by the competent authorities. In such cases, the material will be kept in the country of the majority co-producer. The minority co-producer will have access to the material at all times to make the necessary reproductions.



tarvitavat kopiot yhteistuottajien sopimien ehtojen mukaisesti.

#### X ARTIKLA

Voimassa olevien säännösten ja määräysten mukaisesti sopimuspuolet

a) mahdollistavat toisen maan yhteistuottajan palkkaaman luovan ja teknisen henkilöstön ja esittävien taitelijoiden maahanpääsyn ja tilapäisen oleskelun maassaan yhteistuotannon tekemistä varten; ja

b) vastaavasti sallivat kaiken yhteistuotantoa varten tarvittavan laitteiston tilapäisen maahan tuomin ja maastaviezin.

#### XI ARTIKLA

Yhteistuottajien välisen tuotannon olisi periaatteessa oltava suhteessa niiden osuuteen tuotannon rahoituksista, ja kummankin maan toimivaltaisen viranomaisen olisi se hyväksyttävä.

#### XII ARTIKLA

Se, että kummankin maan toimivaltainen viranomainen hyväksyy yhteistuotantoehdotuksen, ei merkitse jommalle kummalle tai kummallekin yhteistuottajista annettavaa sitoumusta siitä, että valtion viranomaiset myöntävät luvan yhteistuotannon esittämiseen.

#### XIII ARTIKLA

1. Kun yhteistuotantoa viedään maahan, jolla on kiintiösääntöjä, sopimuspuolet pyrkivät

a) sisällyttämään sen, jos mahdollista, enemmistöyhteistuottajan maan kiintiön;

b) sisällyttämään sen, jos mahdollista, sen maan kiintiön, jolla on parhaat mahdollisuudet järjestää sen vienti, silloin kun yhteistuottajien osuudet ovat samansuuruisia; tai

c) jos kohtien a) ja b) soveltamisessa ilmenee ongelmia, sisällyttämään sen, jos mahdollista, sen maan kiintiön, jonka järjestämisestä viennistä tulee suurimmat edut.

2. Poiketen 1 kohdasta silloin kun toisen yhteistuottajan maan elokuvilla on rajoittamaton maahanpääsy maahan, jolla on kiintiösääntöjä, tämän sopimuksen mukaisella

yhteistuotannolla on yhtä suuri oikeus kuin millä tahansa muulla kotimaisella tuotannolla rajoittamattoman maahanpääsyn tuojamahan, jos tämä maa tähän suostuu.

#### XIV ARTIKLA

1. Kun yhteistuotantoa esitetään, se on merkittävä "suomalais-kanadalaiseksi yhteistuotannoksi" tai "kanadalais-suomalaiseksi yhteistuotannoksi" sen mukaan, kummasta maasta enemmistöyhteistuottaja tulee, tai yhteistuottajien välisen sopimuksen mukaan. 2. Tämä merkintä on oltava alku- tai lopputeksteissä, kaikkiallaisessa mainoksissa ja myymineidistämismateriaalissa sekä aina tätä yhteistuotantoa esitettäessä, ja kummankin osapuolen on käytettävä sitä samalla tavalla.

#### XV ARTIKLA

Jos yhteistuotanto esitetään kansainvälisillä elokuvajuhlilla, ja jos sopimuspuolet eivät muuta sovi, sen ilmoittaa sinne enemmistöyhteistuottajan maa, tai jos yhteistuottajien rahoitusosuudet ovat yhtä suuret, se maa, jonka kansallinen ohjaaja on.

#### XVI ARTIKLA

Maiden toimivaltaiset viranomaiset laativat yhdessä yhteistuotantoa varten hakemusten menetelyn, jossa otetaan huomioon Suomessa ja Kanadassa voimassa olevat säännökset ja määräykset. Tämä hakemusmenettely on tämän sopimuksen liitteenä.

#### XVII ARTIKLA

Suomalaisten elokuva-, televisio- ja video- tuotantojen tuonnille, jakelulle ja esittämiseksi Kanadassa ja kanadalaisien elokuva-, televisio- ja video- tuotantojen tuonnille, jakelulle ja esittämiseksi Suomessa ei saa asettaa mitään muita rajoituksia, kuin kummassakin maassa voimassa oleviin säännöksiin ja määräyksiin sisälly.

#### XVIII ARTIKLA

1. Tämän sopimuksen voimassaoloaikana on pyrittävä kokonaistalouteen rahoitukseen osallistumisen sekä luovan ja teknisen henkilökunnan, esittävien taitelijoiden, tilo-

duction undertaken under this Agreement shall be as entitled as any other national production of that country to unrestricted entry into the importing country if that country so agrees.

#### ARTICLE XIV

1. A co-production shall, when shown, be identified as a "Finland-Canada Co-production" or "Canada-Finland Co-production" according to the origin of the majority co-producer or in accordance with an agreement between co-producers.

2. Such identification shall appear in the credits, in all commercial advertising and promotional material and whenever this co-production is shown and shall be given equal treatment by each party.

#### ARTICLE XV

In the event of presentation at international film festivals, and unless the co-producers agree otherwise, a co-production shall be entered by the country of the majority co-producer or, in the event of equal financial participation of the co-producers, by the country of which the director is a national.

#### ARTICLE XVI

The competent authorities of both countries shall jointly establish the rules of procedure for co-productions taking into account the legislation and regulations in force in Finland and in Canada. These rules of procedure are attached to the present Agreement.

#### ARTICLE XVII

No restrictions shall be placed on the import, distribution and exhibition of Finnish film, television and video productions in Canada or that of Canadian film, television and video productions in Finland other than those contained in the legislation and regulations in force in each of the two countries.

#### ARTICLE XVIII

1. During the term of the present Agreement, an overall balance shall be aimed for with respect to financial participation as well as creative personnel, technicians, perfor-

190 jen ja laitteistojen (studio ja laboratorio) osalla, otteen huomioon kummankin maan tyypilliset ominaispiirteet.

2. Kummankin maan toimivaltaisen viranomaisen tutki tarvittaessa tämän sopimuksen täytäntöpanoehdot kaikkien sen soveltamiseen liittyvien ongelmien ratkaisemiseksi. Toimivaltaiset viranomaiset voivat tarvittaessa suosittaa mahdollisia tarkistuksia elokuvaja- ja videotalan yhteistyön kehittämiseksi kumppaakin maata parhaiten hyödyntävällä tavalla.

3. Yhteiskomitea perustetaan valvomaan tämän sopimuksen täytäntöpanoa. Yhteiskomitea selvittää, onko tähän tasapainoon päästy, ja, jos ei ole, päättää tarvittavista toimenpiteistä tämän tasapainon pääsemiseksi. Yhteiskomitean kokous pidetään periaatteessa joka kolmas vuosi, tai tarvittaessa, ja se kokoontuu vuorotellen kummassakin maassa. Yhteiskomitea kokoontuu kuuden (6) kuukauden kuluessa siitä, kun toinen sopimuspuoli on kutsunut sen koolle.

#### XIX ARTIKLA

1. Tätä sopimusta sovelletaan tilapäisesti sen allekirjoituspäivästä lähtien. Se tulee voimaan, kun kumpikin sopimuspuoli on ilmoittanut toiselle, että sen sisäiset ratifiointimenettelyt on loppuun suoritettu.

2. Se on voimassa viiden (5) vuoden ajan voimaantulopäivästä, sopimuksen voimaantulo jatkuu automaattisesti samantyyppisina jaksoina, ellei jompi kumpi maa anna kirjallista irtisanomislomitusta kuutta (6) kuukautta ennen sopimuksen voimaasaoloajan päättymispäivää.

3. Toimivaltaisten viranomaisten hyväksymät yhteistuotannot, jotka ovat kesken sillä hetkellä, kun jompi kumpi sopimuspuoli antaa tämän sopimuksen irtisanomislomituksen, saavat tämän sopimuksen mukaiset täydet etuudet valmistukseensa saakka. Sopimuksen voimaasaoloajan päättymisen tai sopimuksen irtisanomisen jälkeen sen ehtoja sovelletaan edelleen valmistuneista yhteistuotannoista saatavan tuoton jakamiseen.

4. Sopimuspuolet voivat tarkistaa tätä sopimusta kirjallisella sopimuksella.

mers, and facilities (studio and laboratory), taking into account the respective characteristics of each country.

2. The competent authorities of both countries shall examine the terms of implementation of this Agreement as necessary in order to resolve any difficulties arising from its application. They shall, as needed, recommend possible amendments with a view to developing film and video co-operation in the best interests of both countries.

3. A Joint Commission is established to look after the implementation of this Agreement. The Joint Commission shall examine if this balance has been achieved and, in case of the contrary, shall determine the measures deemed necessary to establish such a balance. A meeting of the Joint Commission shall take place in principle once every three years, or as necessary, and it shall meet alternately in the two countries. The Joint Commission shall meet within six (6) months following its convocation by one of the Parties.

#### ARTICLE XIX

1. The present agreement shall be applied provisionally on the date of its signature. It shall come into force when each Party has informed the other that its internal ratification procedures have been completed.

2. It shall be valid for a period of five (5) years from the date of its entry into force; a tacit renewal of the Agreement for like periods shall take place unless one or the other country gives written notice of termination six (6) months before the expiry date.

3. Co-productions which have been approved by the competent authorities and which are in progress at the time of notice of termination of this Agreement by either Party, shall continue to benefit fully until completion from the provisions of this Agreement. After expiry or termination of this Agreement, its terms shall continue to apply to the division of revenues from completed co-productions.

4. This Agreement may be amended by the Parties by written agreement.

TÄMÄN VAKUUDEKSI allekirjoittajat ovat hallituksensa siihen asianmukaisesti valittuina allekirjoittaneet tämän sopimuksen.

TEHTY kahtena kappaleena Tukholmassa, 31 päivänä maaliskuuta 1998, suomen, ruotsin, englannin ja ranskan kielellä, kunkin version ollessa yhtä todistusvoimainen.

#### SUOMEN HALLITUKSEN PUOLESTA

*Claes Andersson*

#### FOR THE GOVERNMENT OF THE REPUBLIC OF FINLAND

*Claes Andersson*

#### KANADAN HALLITUKSEN PUOLESTA

*Sheila Copps*

#### FOR THE GOVERNMENT OF CANADA

*Sheila Copps*

## LIITE

## HAKEMUSMENETTELY

Tämän sopimuksen mukaisia etuuksia on haettava kullekin yhteistuotannolle samanaikaisesti kummallakin toimivaltaisella viranomaisella vähintään kolmekymmentä (30) päivää ennen kuvituksen alkamista. Sen maan toimivaltainen viranomainen, jonka kansallainen enemmistöyhteistuottaja on, ilmoittaa ehdotuksensa toisen maan toimivaltaiselle viranomaiselle kahdenkymmenen (20) päivän kuluessa siitä, kun se on vastaanottanut kaikki jäljempänä eritellyt asiakirjat. Sen maan toimivaltainen viranomainen, jonka kansallainen vähemmistöyhteistuottaja on, on ilmoitettava päätöksensä kahdenkymmenen (20) päivän kuluessa tästä. Hakemuksen tueksi on toimitettava seuraavat asiakirjat, jotka on laadittu suomeksi tai ruotsiksi Suomen osalta ja englanniksi tai ranskaksi Kanadan osalta:

- I. Lopullinen käsikirjoitus;
- II. Asiakirja, joka todistaa, että yhteistuotannon tekijänoikeudet on laillisesti hankittu;
- III. Jäljennös kummankin yhteistuottajan allekirjoittamasta yhteistuotantosopimuksesta;

- Sopimukseseen tulee sisältyä:
  1. yhteistuotannon nimi;
  2. käsikirjoituksen kirjoittajan nimi tai käsikirjoituksen muokattajan nimi, jos se perustuu kirjalliseen lähteeseen;
  3. ohjajan nimi (ohjajan vaihtamiseen liittyvä määräys sallitaan tarvittaessa);
4. talousarvio;
5. rahotussuunnitelma;
6. määräys, jossa sovitaan tuoton, markkinoiden, levitysvälineiden tai näiden yhdistelmän jakamisesta;
7. määräys, jossa sovitaan yksityiskohtaisesti kunkin yhteistuottajan osuudet talousarvion ylläpitämis- tai alittamispäauksissa näiden suhteellisen osuuksien ollessa pääasiassa suhteessa kunkin panokseen, vaikkakin vähemmistöyhteistuottajan osuus ylläpitä-

## ANNEX

## RULES OF PROCEDURE

Application for benefits under this Agreement for any co-production must be made simultaneously to both competent authorities at least thirty (30) days before shooting begins. The competent authority of the country of which the majority co-producer is a national shall communicate its proposal to the other competent authority within twenty (20) days of the submission of the complete documentation as described below. The competent authority of the country of which the minority co-producer is a national shall thereupon communicate its decision within twenty (20) days.

Documentation submitted in support of an application shall consist of the following items, drafted in Finnish or Swedish in the case of Finland and in English or French in the case of Canada:

- I. The final script;
- II. Documentary proof that the copyright for the co-production has been legally acquired;
- III. A copy of the co-production contract signed by the two co-producers;

The contract shall include:

1. the title of the co-production;
2. the name of the author of the script, or that of the adaptor if it is drawn from a literary source;
3. the name of the director (a substitution clause is permitted to provide for his replacement if necessary);
4. the budget;
5. the financing plan;
6. a clause establishing the sharing of revenues, markets, media or a combination of these;
7. a clause detailing the respective shares of the co-producers in any over or underexpenditure, which shares shall in principle be proportional to their respective contributions, although the minority co-producer's share in any overexpenditure may be limited to a

pauksessa voidaan rajata pienemmäksi suhteelliseksi osudeksi tai kintäksi summaksi sillä edellytyksellä, että sopimuksen VI artiklassa sallitua vähimmäisosuutta kumoitetaan;

8. määräys, jossa todetaan, että tämän sopimuksen mukaisten etuuksien myöntämisen ei merkitse sitä, että valtion viranomaiset kummassakaan maassa sitouisivat myöntämään luvan yhteistuotannon julkiselle esittämislle;

9. määräys, jossa sovitaan ne toimet, joihin ryhdytään, jos

a) toimivaltainen viranomainen, tapausista perusteellisesti harkittuana, jommassa kummassa maassa kielitaytyy myöntämästä haettuja etuuksia;

b) toimivaltainen viranomainen kielittää yhteistuotannon esittämisen jommassa kummassa maassa tai sen viemisen kolmanteen maahan;

c) jompi kumpi sopimuspuoli ei kykene täyttämään sitoumuksiaan;

10. ajankohita, jolloin kuvauksen on määrä alkaa;

11. määräys, jossa sovitaan, että enemmistötuottajan on olettava vakuuus, joka kattaa vähintään "kaikki tuotantoriskit" ja "kaikki alkuperäismateriaalia koskevat tuotantoriskit";

12. määräys, jossa sovitaan tekijänoikeuksien omistuksen joko kunkin yhteistuottajan osuuteen perustuvassa suhteessa;

IV. Jakelusopimus, jos se on jo allekirjoitettu;

V. Luettelo luovasta ja teknisestä henkilöstöstä, josta käy ilmi heidän kansallisuutensa sekä esittävien taitelijoiden ollessa kyseessä ne osat, jotka heidän on tarkotus näytellä;

VII. Tuotantoaikataulu;

VIII. Yksityiskohtainen budjetti, josta käy ilmi ne kulu, jotka kunkin maan on määrä ottaa hoidettavakseen, ja

VIII. Tiivistelmä.

Kummankin maan toimivaltainen viranomainen voi vaatia lisäasiakirjoja ja kaikkia muita tarpeelliseksi katsomiaan tietoja.

Periaatteessa lopullinen kuvauskäsikirjoitus (sisältäen vuoropuhelun) olisi toimitettava toimivaltaisille viranomaisille ennen kuvauksen alkamista.

Muutoksia, mukaan lukien yhteistuottajan vaihtaminen, voidaan tehdä alkuperäiseen sopimukseen, mutta ne on toimitettava kum-

lower percentage or to a fixed amount providing that the minimum proportion permitted under Article VI of the Agreement is respected;

8. a clause recognizing that admission to benefits under this Agreement does not constitute a commitment that governmental authorities in either country will grant a licence to permit public exhibition of the co-production;

9. a clause prescribing the measures to be taken where:

(a) after full consideration of the case, the competent authorities in either country refuse to grant the benefits applied for;

(b) the competent authorities prohibit the exhibition of the co-production in either country or its export to a third country;

(c) either party fails to fulfil its commitments;

10. the period when shooting is to begin;

11. a clause stipulating that the majority co-producer shall take out an insurance policy covering at least "all production risks" and "all original material production risks";

12. a clause providing for the sharing of the ownership of copyright on a basis which is proportionate to the respective contributions of the co-producers;

IV. The distribution contract, where this has already been signed;

V. A list of the creative and technical personnel indicating their nationalities and, in the case of performers, the roles they are to play;

VI. The production schedule;

VII. The detailed budget identifying the expenses to be incurred by each country; and

VIII. The Synopsis.

The competent authorities of the two countries can demand any further documents and all other additional information deemed necessary.

In principle, the final shooting script (in-

cluding the dialogue) should be submitted to the competent authorities prior to the commencement of shooting.

Amendments, including the replacement of a co-producer, may be made in the original contract, but they must be submitted for ap-

N:o 24

mankin maan toimivaltaisen viranomaisen hyväksyväksi, ennen kuin yhteistuotanto on valmistunut. Yhteistuotajan korvaaminen toisella sallitaan ainoastaan poikkeustapauksissa ja kummankin maan toimivaltaisen viranomaisen hyväksymistä syistä.

Toimivaltaiset viranomaiset ilmoittavat toisilleen päätöksistään.

proval by the competent authorities of both countries before the co-production is finished. The replacement of a co-producer may be allowed only in exceptional cases and for reasons satisfactory to both the competent authorities.

The competent authorities will keep each other informed of their decisions.

# SUOMEN SÄÄDÖSKOKOELMAN SOPIMUSSARJA

## ULKOVALTAIN KANSSA TEHDYT SOPIMUKSET

1999

Julkaistu Helsingissä 1 päivänä huhtikuuta 1999

N:o 25—48

### SISÄLLYS

N:o	Sivu
25	Laki lävällän, Suomen ja Ruotsin liittymisestä tuomioistuimen toimivaltaa sekä tuomioiden täytäntöpanoa yksityisoikeuden alalla koskevaan yleissopimukseen sekä yleissopimuksen tulkintaa Euroopan yhteisöjen tuomioistuimessa koskevaan pöytäkirjaan tehdyn yleissopimuksen eräiden määräysten hyväksymisestä .....
26	Asetus lävällän, Suomen ja Ruotsin liittymisestä tuomioistuimen toimivaltaa sekä tuomioiden täytäntöpanoa yksityisoikeuden alalla koskevaan yleissopimukseen sekä yleissopimuksen tulkintaa Euroopan yhteisöjen tuomioistuimessa koskevaan pöytäkirjaan tehdyn yleissopimuksen voimaansaattamisesta ja sen eräiden määräysten hyväksymisestä annetun lain voimaantulosta ..
27	Laki merilain muuttamisesta .....
28	Asetus merilain muuttamisesta annetun lain voimaantulosta .....
29	Laki lävällän, Suomen ja Ruotsin liittymisestä sopimusvelvoitteisiin sovellettavaa lakia koskevaan yleissopimukseen sekä sen tulkintaa Euroopan yhteisöjen tuomioistuimessa koskevaan ensimmäisen pöytäkirjaan tehdyn yleissopimuksen eräiden määräysten hyväksymisestä .....
30	Asetus lävällän, Suomen ja Ruotsin liittymisestä sopimusvelvoitteisiin sovellettavaa lakia koskevaan yleissopimukseen sekä sen tulkintaa Euroopan yhteisöjen tuomioistuimessa koskevaan ensimmäisen pöytäkirjaan tehdyn yleissopimuksen osittaisesta voimaansaattamisesta ja sen eräiden määräysten hyväksymisestä annetun lain osittaisesta voimaantulosta .....
31	Laki kansainvälisluonteisiin sopimuksiin sovellettavasta laista annetun lain kumoamisesta .....
32	Asetus kansainvälisluonteisiin sopimuksiin sovellettavasta laista annetun lain kumoamisesta annetun lain voimaantulosta .....
33	Laki työsuojelulain muuttamisesta .....
34	Asetus työsuojelulain muuttamisesta annetun lain voimaantulosta .....
35	Laki merimieslain 87 §:n kumoamisesta .....
36	Asetus merimieslain 87 §:n kumoamisesta annetun lain voimaantulosta .....
37	Laki merityökalain 16 c §:n kumoamisesta .....
38	Asetus merityökalain 16 c §:n kumoamisesta annetun lain voimaantulosta .....
39	Laki merimiesten vuosilomalain 28 §:n kumoamisesta .....
40	Asetus merimiesten vuosilomalain 28 §:n kumoamisesta annetun lain voimaantulosta .....
41	Laki kansainvälisluonteisiin vakuutusyhtiöihin sovellettavasta laista annetun lain 1 ja 13 §:n muuttamisesta .....
42	Asetus kansainvälisluonteisiin vakuutusyhtiöihin sovellettavasta laista annetun lain 1 ja 13 §:n muuttamisesta annetun lain voimaantulosta .....
43	Laki ulkomaista vakuutusyhtiöistä annetun lain 58 §:n kumoamisesta .....
44	Asetus ulkomaista vakuutusyhtiöistä annetun lain 58 §:n kumoamisesta annetun lain voimaantulosta .....
45	Laki ulkomaisen luotto- ja rahoituslaitoksen toiminnasta Suomessa annetun lain 22 §:n kumoamisesta .....
46	Asetus ulkomaisen luotto- ja rahoituslaitoksen toiminnasta Suomessa annetun lain 22 §:n kumoamisesta annetun lain voimaantulosta .....
47	Laki kuluttajansuojalan 4 ja 12 luvun muuttamisesta .....
48	Asetus kuluttajansuojalan 4 ja 12 luvun muuttamisesta annetun lain voimaantulosta .....

N:o 24, 1 1/2 arkkia

PÄÄTÖKSIÄ JARI LINHALA  
OY EDITA AB, HELSINKI 1999

12—1999

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## **APPENDIX 6**

## N:o 7

(Suomen säädöskokoelman n:o 214/83)

**Asetus****Ranskan kanssa tehdyn elokuva-alan sopimuksen voimaansattamisesta**

Annettu Helsingissä 29 päivänä helmikuuta 1983

oasiainministerin esittelystä säädettään:

**1 §**

sissa 2 päivänä helmikuuta 1983 Suo-  
savallan hallituksen ja Ranskan tasaval-  
luksen väliä tehty elokuva-alan sopi-  
lee voimaan 4 päivänä maaliskuuta 1983  
in siitä on sovittu.

**2 §**

Tämä asetus tulee voimaan 4 päivänä maal-  
iskuuta 1983.

Helsingissä 25 päivänä helmikuuta 1983

**Tasavallan Presidentti**  
**MAUNO KOIVISTO**

Ulkoasiainministeri *Par Stenbäck*

Suomen tasavallan hallituksen

ja

Ranskan tasavallan hallituksen  
välinen elokuva-alan**SOPIMUS**

Suomen tasavallan hallitus ja Ranskan tsa-  
vallan hallitus,  
jotka pyrkivät tukemaan sellaisten yhteistuo-  
tanton perustuvien elokuvien valmistusta,  
jotka taiteellisilla ja teknisillä ansioillaan ovat  
omaan kohorttamaan maidensa nauttimaan avos-  
tusta sekä edistämään maidensa välistä eloku-  
va-vaivahittoa,  
ovat sopineet seuraavasta:

**I yhteistuotanto****1 artikla**

Kummankin maan viranomaiset käsittelevät  
tänään sopimuksen piiriin hyväksytyt yhteisesti  
tuotetut elokuvat kotimaisina elokuvina maas-  
saan sovellettavien lakien ja muiden määräys-  
ten mukaisesti.

Niiden hyväksy tulevat täysimääräisinä ne  
edut, jotka jo voimassaolevissa tai mahdolli-  
sesti voimaansattavissa säädöksissä on varat-  
tu kotimaisille elokuville. Myöntämässä talou-  
delliset etuisuudet kumpikin valtio varaa sille  
yhteistuotajalle, joka on sen kansalainen.

Molempien maiden väliseen yhteistuotantoon  
perustuvien elokuvien valmistamiselle tulee saa-  
da hyväksyminen kummankin maan asianomai-  
silta viranomaisilta, jotka ensin neuvottelevat  
keskenään asiasta.

Nämä viranomaiset ovat:

Suomessa: Suomen elokuvasäätiö  
(Fondation Finlandaise du  
Cinéma)

Ranskassa: Ranskan Elokuvataidekeskus  
(Le Centre National de la  
Cinematographie)

**ACCORD**

Cinématographique  
entre  
La Finlande et la France

Le Gouvernement de la République Fin-  
landaise,

Le Gouvernement de la République Fran-  
çaise,  
Soucieux de faciliter la réalisation en copro-  
duction de films susceptibles de servir par  
leurs qualités artistiques et techniques le  
prestige de leur pays et de développer leurs  
échanges de films, sont convenus de ce qui  
suit:

**I Coproduction****Article 1**

Les films réalisés en coproduction et ad-  
mis au bénéfice du présent Accord sont consi-  
dérés comme films nationaux par les Autorités  
des deux pays conformément aux dispositions  
législatives et réglementaires applicables dans  
leur pays.

Ils bénéficieront de plein droit des avantages  
réservés aux films nationaux qui résultent des  
textes en vigueur ou qui pourront être  
édictees, chacun des deux Etats réservant les  
avantages financiers qu'il octroie à celui des  
coproducteurs qui est son national.

La réalisation de films en coproduction entre  
les deux pays doit recevoir l'approbation, après  
consultation entre elles, des Autorités com-  
pétentes des deux pays:

en Finlande: La Fondation Finlandaise du  
Cinéma

en France: Le Centre National de la  
Cinematographie.

## 2 artikla

## Article 2

äikeen osalliseksi yhteistuotannon edustavien tullen olla sellaisten tuottajien toimen tuotanto-organisaatio ja kokemus tamaan viranomaisen tunnustamia.

## 3 artikla

## Article 3

ssaan osuutta yhteistuotannon edustavien tullen tuottajien tulee esittää hyöntejä sellaiset anomukset, jotka on laaduttavien sopimukseen oleellisesti kunnossuhtumisen liitteessä esittettyjä anoneetelyä koskevia määräyksiä.

nankaan maan asianomaisten viranomaisten suostumisen tietyn elokuvan yhteistuotantaa ei saa perustua siihen, että viranomaisiin valmista osia kysytystä elokuvasta nankaan maan asianomaisten viranomaisten suostumuksensa tietyn elokuvan tuottamiselle tätä suostumusta ei voi jättä perustua ilman asianomaisten viranomaisten keskinäistä sopimusta.

## 4 artikla

## Article 4

nankaan maan tuottajien taloudellinen, ja taiteellinen osuus yhteistuotannosta voi vaihdella 30–70 prosenttiin.

rvat tulee valmistaa jommankumman tai kumman valtion omalla kielellä sellaisten n toimesta ja käytännön teknisiä henkilöitä ja näyttelijöitä, jotka ovat joko Suomalaisia tai Suomessa tavannomaisesti a työskenteleviä ulkomaalaisia tai jotka Ranskan kansalaisia ja Ranskassa vaati suavia henkilöitä.

rvan niin vaatiessa ja kumman maan viranomaisten siltien suostuttua kumman valtion käytäviä näyttelijä, jolla ei ole kukaan edellisessä kappaleessa mainittu kansalaisuutta.

nankaan maan asianomaisten viranomaisten keskenään ehdotusta, joiden puitteissa tuotettavien elokuvien valmistukseen liitua sellaisten kolmansien valtioiden sista, joiden kanssa on voimassa sopimusten oikeudesta vapaaseen liikutta asuinpaikan valintaan.

## 5 artikla

## Article 5

Studiassa tapahtuva kuvaus sekä äänitys- ja laboratoriontyöt tulee suorittaa seuraavia määräyksiä noudattaen.

Studiokuvaukset tulee mieluiten suorittaa enemmän sijoittavan yhteistuottajan maassa.

Alkuperäisen kuva- ja ääninegatiivin molemmat yhteistuottajat onnistavat kaikissa tapauksissa yhteisesti negatiivin säilytyspaikasta riippumatta.

Kummallakin yhteistuottajalla on kaikissa tapauksissa oikeus omaan versioon välineistävistä. Jos toinen yhteistuottaja luopuu tästä oikeudestaan, negatiivi sijoitetaan yhteistuottajien keskenään sopimaan paikkaan.

Negatiivin kehittäminen tapahtuu periaatteessa enemmän sijoittaneen tuottajan maan laboratoriossa, samoin kuin tässä maassa käytettäviksi tarkoitettujen kopioiden valmistaminen, kun taas vähemmän sijoittaneen tuottajan maassa käytettäväksi tarkoitettujen kopioiden valmistaminen tapahtuu tämän maan laboratoriossa.

## 6 artikla

## Article 6

Kummankin maan asianomaisten viranomaisten tarkastavat säännöllisin väliajoin, valitsen kummankin maan taiteellisten panosten välillä tämän sopimuksen määräyksissä tavoteltu tasapaino, ja mikäli niin ei ole asiantaite, ne päättävät tarpeelliseksi katsottavista toimituksista.

## 7 artikla

## Article 7

Tuotto jaetaan yhteistuottajien kesken periaatteessa siten, että se on suhteessa tuottajan omaan kokonaissijoitukseen. Yhteistuottajien käytönoittamille taloudellisille tuloille ja tuoton jakoperiaatteille on saatava kummankin maan asianomaisten viranomaisten hyväksyntä.

## 8 artikla

## Article 8

Mikäli yhteistuotantosopimuksessa ei toisin määrätä, yhteisesti tuotettujen elokuvien viennistä huolehtii enemmän sijoittanut yhteistuottaja vähemmän sijoittaneen suostumuksella.

Kummankin tuottajan sijoituksen ollessa yhtä suuri, elokuvan viennistä huolehtii se yhteistuottaja, jolla on saman maan kansalaisuus.

## Article 5

Les travaux de prises de vues en studio, de sonorisation et de laboratoire doivent être réalisés en se référant aux dispositions ci-après.

Les prises de vues en studio doivent avoir lieu de préférence dans le pays du coproducteur majoritaire.

Chaque coproducteur est, en tout état de cause, copropriétaire du négatif original image déposé.

Chaque coproducteur a droit, en tout état de cause, à un internégatif dans sa propre version. Si l'un des coproducteurs renonce à ce droit, le négatif sera déposé en un lieu choisi d'un commun accord par les coproducteurs.

En principe, le développement du négatif est effectué dans un laboratoire du pays majoritaire ainsi que le tirage des copies destinées à l'exploitation dans ce pays, les copies destinées à l'exploitation dans le pays minoritaire étant tirées dans un laboratoire de ce pays.

## Article 6

Les autorités compétentes des deux pays examineront périodiquement si l'équilibre des contributions, sur les plans artistique et technique, entre les deux pays, résultant des dispositions du présent Accord a été assuré et, à défaut, arrêteront les mesures jugées nécessaires.

## Article 7

La répartition des recettes est faite en principe proportionnellement à l'apport total de chacun des coproducteurs. Les dispositions financières adoptées par les coproducteurs et les zones de partage des recettes sont soumises à l'approbation des Autorités compétentes des deux pays.

## Article 8

Sauf dispositions contraires du contrat de coproduction l'exportation des films coproduits est assurée par le coproducteur majoritaire avec l'accord du coproducteur minoritaire.

Pour les films à participation égale, l'exportation est assurée, sauf convention contraire entre les Parties, par le coproducteur ayant

bijaajalla, ellei osapuolten kesken toisin Mikäli vieni suuntaamu tuontitajouk- relavaan maahan, elokuva liitetään mi- ahdollista sen yhteistuotannossa mukana maan vientitilintuloon, joka nauttii suosi- asta tuontitokohrelusta.

## 9 artikla

istuotantona valmistettujen elokuvien stisissä, trulereissa ja mainosaineistoissa alla maininta Suomen ja Ranskan väl- iteistuotannosta.

## 10 artikla

isesti tuotetut elokuvat esitettään elo- okuvina, ja kilpailuissa sen valtion kansali- okuvina, josta tuotantoon etenemän si- ut yhteistuotajia on kotoisin, elleivät yit- tajat ole keskenään sopineet sellaisesta asesta järjestelyistä, jonka kummankin asianomaiset viranomaiset ovat hyväksy-

## 11 artikla

relokuvia yhteisesti tuotettaessa tulee elokuvan valmistuksessa pyrkiä ylei- aspainoon niin taiteen, tekniikan kuin mkin osalta.

## 12 artikla

umankin maan viranomaisten tulee tut- tontaisessa hengessä ja yksittellen ne ta- t, joissa on kyseessä elokuvan valmista- n ja teknisen henkilöstön liikkuminen yhteistuotantona Suomen, Ranskan ja en maiden kesken, joiden kanssa jom- ummalla valtiolla on yhteistuotantoso-

## 13 artikla

en huomioon voimassaoleva lainsäädän- muut määräykset, yhteistuotantona val- avien elokuvien tekoon osallistuvan tai- n ja teknisen henkilöstön liikkuminen kulu tulee tehdä mahdollisimman esteet- i samoin kuin niiden valmistamisen tarvik- lisen hyväksikäytön edellyttämien tarvik- (filmin, teknisen välineistön, pukujen, starpeiden, mainosaineiston jne.) maa- nti ja maastavienti kummassakin maassa.

la nationalité du metteur en scène. Dans le cas d'exportation vers un pays appliquant des restrictions à l'importation, le film est, dans la mesure du possible, importé sur le contingent de celui des deux pays associés par la coproduction qui bénéficie du régime le plus favorable.

## Article 9

Les génériques, films annonces et matériel publicitaire des films réalisés en coproduction doivent mentionner la coproduction entre la Finlande et la France.

## Article 10

Dans les festivals et compétitions, les films coproduits sont présentés avec la nationalité de l'Etat auquel appartient le coproducteur majoritaire sauf disposition différente prise par les coproducteurs et approuvée par les Autorités compétentes des deux pays.

## Article 11

En matière de coproduction de films de court métrage, chaque film doit être réalisé avec le souci d'atteindre un équilibre général sur les plans artistique, technique et financier.

## Article 12

Les Autorités compétentes des deux pays examineront favorablement cas par cas la réalisation en coproduction de films entre la Finlande et la France et les pays avec lesquels l'un ou l'autre Etat est lié par des accords de coproduction.

## Article 13

Sous réserve de la législation et de la réglementation en vigueur, toutes facilités sont accordées pour la circulation et le séjour du personnel artistique et technique collaborant aux films réalisés en coproduction ainsi que pour l'importation et l'exportation dans chaque pays du matériel nécessaire à leur fabrication et à leur exploitation (pellicules, matériel technique, costumes, éléments de décors, matériel de publicité, etc.).

## II Elokuvien vaihto

## 14 artikla

Otaen huomioon voimassaoleva lainsäädän- to ja muut määräykset, valmiiden kotimaisien elokuvien myyntiä, maahanvientiä, kaupallista hyväksikäyttöä tai levittämistä yleensä ei puo- lin eikä toisin rajoiteta millään tavoin.

Tämän sopimuksen nojalla maahanvientiä elokuvien myyntistä ja kaupallisesta hyväksikäytöstä sattuena tuoton siirto hoidetaan tuot- tajan kesken tehtyjä sopimuksia noudattaen kummassakin maassa voimassaolevan lainsäädän- nän ja muiden määräysten mukaisesti.

## III Yleiset määräykset

## 15 artikla

Kummankin maan asianomaiset viranomaiset välittävät toisilleen kaikki tiedot, jotka koske- vat yhteistuotantoprojektien ja elokuvien vaih- don taloudellisia ja teknisiä kysymyksiä, sekä yleensä kaikki lisätiedot, jotka koskevat näi- den maiden välisiä elokuva-alalla tai niiden lainsäädännössä tai muissa määräyksissä tapah- tunutta muutoksia, jotka näihin suhteisiin voi- vat vaikuttaa.

## 16 artikla

Kummankin maan asianomaiset viranomaiset tulevat tarvittaessa tutkimaan tämän sopimuks- sen soveltuvuutta käytännön tavoitteensa- poista sen määräysten toteuttamisesta mah- dollisesti aiheutuneet vaikeudet. Ne tulevat tutkimaan, milläiset muutokset ovat suotavia elokuva-alan yhteistyön kehittämiseksi kum- mankin maan yhteisen edun nimissä.

Viranomaiset kokoontuvat elokuva-alan se- lektion puitteissa jommankumman niistä sitä esitettävä, varsinkin silloin, kun kyseessä on merkittävien muutosten toimeenpaneminen elo- kuvateollisuutta koskevassa lainsäädännössä tai muissa säädöksissä.

## 17 artikla

Tämä sopimus tulee voimaan 30 päivän kuluttua allekirjoittamisesta. Sopimus on tehty olemaan voimassa kaksi vuotta voimaantulopäivästä lukien ja sen voi- massaolo jatkuu itsestään samantapuisina ajan-

## II Echanges de films

## Article 14

Sous réserve de la législation et de la réglementation en vigueur, la vente, l'importation, l'exploitation et d'une manière générale la diffusion des films impressionnés nationaux ne sont soumises de part et d'autre à aucune restriction.

Les transferts de recettes provenant de la vente et de l'exploitation des films importés dans le cadre du présent Accord sont effectués en exécution des contrats conclus entre les producteurs conformément à la législation et à la réglementation en vigueur dans chacun des deux pays.

## III Dispositions générales

## Article 15

Les Autorités compétentes des deux pays se communiquent toutes informations sur les questions financières et techniques concernant les coproductions et les échanges de films, et, en général, toutes précisions relatives aux relations cinématographiques entre les deux pays ou aux modifications intervenues dans la législation ou la réglementation pouvant les affecter.

## Article 16

Les Autorités compétentes des deux pays examineront au besoin les conditions d'ap- plication du présent Accord afin de résoudre les difficultés éventuelles soulevées par la mise en oeuvre de ses dispositions. Elles étudieront les modifications souhaitables en vue de développer la coopération cinématographique dans l'intérêt commun des deux pays.

Elles se réuniront, dans le cadre d'une com- mission mixte cinématographique, à la demande de l'une d'entre elles notamment en cas de modifications importantes soit de la législation soit de la réglementation applicables à l'in- dustrie cinématographique.

## Article 17

Le présent Accord entre en vigueur 30 jours après sa signature. Il est conclu pour une durée de deux ans à dater de son entrée en vigueur; il est renouvelable pour des périodes identiques par



jaksoina ellei jompikumpi sopimuspuoli sitä irisano kolme kuukautta ennen voimassaolon päättymistä.

Tämä vakudeksi allekirjoittaneet hallitusten-  
sa siihen asianmukaisesti valtuuttamina ovat  
allekirjoittaneet tämän sopimuksen.

Tehdy Pariisissa 2 päivänä helmikuuta  
1983 kahtena kappaleena suomen ja ranskan  
kielellä, molempien tekstien ollessa yltä to-  
distusvoimaiset.

Suomen tasavallan hallituksen  
puolesta

*Pär Stenbäck*

Ranskan tasavallan hallituksen  
puolesta

*Claude Cheysson*

Pour le Gouvernement  
de la République finlandaise

*Pär Stenbäck*

Pour le Gouvernement  
de la République française

*Claude Cheysson*

tacite reconduction sauf dénonciation par l'une  
des Parties contractantes trois mois avant son  
échéance.

En foi de quoi les soussignés, dûment au-  
torisés par leurs gouvernements, ont signé  
le présent accord.

Feit en double exemplaire à Paris, le 2  
février 1983, en finnois et en français, les deux  
textes faisant également foi.

# Liite

## TOIMEENPANOMENETTELY

Päästäkseen osalliseksi sopimuksen suomista  
eduista kummankin maan tuottajien tulee liit-  
tää yhteistuotannon etuja koskeviin, oman maan  
viranomaisille kuukautta ennen kuvauksia osoi-  
tettaviin anomuksiinsa seuraavat asiakirjat:

- asiakirja tekijänoikeuksien saamisesta teok-  
sen taloudellista hyväksikäyttöä varten;
- luettelo kummankin maan teknisestä ja  
yksityiskohtainen käsikirjoitus;
- taiteellisesta panoksesta;
- yksityiskohtainen kustannusarvio ja rahoi-  
tussuunnitelma;
- elokuvan työsuunnitelma;
- yhteistuotantoon ryhtyvien yhtiöiden väli-  
nen yhteistuotantosopimus.

Kummankin maan asianomaiset viranomaiset  
toimittavat toisilleen nämä asiakirjat heti saa-  
tuaan ne itse haluunsa. Taloudellisesti vähen-  
män sijottavan maan viranomaiset anavat  
suostumuksensa vasta sitten, kun ovat saaneet  
tietää taloudellisesti enemmän sijottavan maan  
viranomaisten mielipiteen.

# Annexe

## PROCEDURES D'APPLICATION

Les producteurs de chacun des pays doivent,  
pour bénéficier des dispositions de l'Accord,  
joindre à leurs demandes d'admission au  
bénéfice de la coproduction, adressées un mois  
avant le tournage à leurs Autorités respectives,  
un dossier comportant:

- un document concernant l'acquisition des  
droits d'auteur pour l'utilisation écono-  
mique de l'oeuvre;
- un scénario détaillé;
- la liste des éléments techniques et artis-  
tiques des deux pays;
- un devis et un plan de financement  
détaillés;
- un plan de travail du film;
- le contrat de coproduction passé entre les  
sociétés coproductrices.

Les Autorités compétentes des deux pays se  
communiquent les dossiers ainsi constitués dès  
leur dépôt. Celles du pays à participation  
financière minoritaire ne donnent leur agrément  
qu'après avoir reçu l'avis de celles du pays à  
participation financière majoritaire.

[TRANSLATION — TRADUCTION]

AGREEMENT<sup>1</sup> BETWEEN FINLAND AND FRANCE CONCERNING CINEMATOGRAPHY

No. 21935

FINLAND  
and  
FRANCE

Agreement concerning cinematography (with annex). Signed at Paris on 2 February 1983

*Authentic texts: Finnish and French.  
Registered by Finland on 10 June 1983.*

FINLANDE  
et  
FRANCE

Accord cinématographique (avec annexe). Signé à Paris le 2 février 1983

*Textes authentiques : finnois et français.  
Enregistré par la Finlande le 10 juin 1983.*

The Government of the Republic of Finland,  
The Government of the French Republic,  
Being anxious to facilitate the co-production of films which, by virtue of their artistic and technical merits, are likely to enhance the prestige of the two countries, and to develop exchanges of films between them,  
Have agreed as follows:

I. CO-PRODUCTION

*Article 1.* Co-production films covered by this Agreement shall be treated as films of national origin by the authorities of the two countries in accordance with the legislative provisions and regulations applicable in their country.

Such films shall enjoy as of right the privileges accorded to national films under texts which are in force or which may hereafter be promulgated, whereby each of the two States accords the financial privileges which it grants to the co-producer who is its national.

The making of co-production films by the two countries shall require the approval, after mutual consultation, of the competent authorities of the two countries:

In Finland: the Finnish Cinema Foundation;

In France: the Centre national de la cinématographie.

*Article 2.* In order to enjoy co-production privileges, films must be made by co-producers who have an organization and experience recognized by the national authority.

*Article 3.* Applications for co-production privileges by the producers of each of the two countries shall be drawn up with a view to their approval in accordance with the provisions of the implementation procedure set forth in the annex to this Agreement, which is an integral part of the said Agreement.

Approval of the co-production of a specific film by the competent authorities of each of the two countries may not be made contingent upon the presentation of segments reproduced from such a film.

When the competent authorities of the two countries have given their consent to the co-production of a specific film, that consent may not be subsequently withdrawn except by agreement between the said competent authorities.

*Article 4.* The economic, technical and artistic contributions of the producers of the two countries to a co-production film may vary between 30 and 70 per cent.

Films must be made in the national language of one of the two States or in the two languages by directors and with technicians and performers who have the status

<sup>1</sup> Came into force on 4 March 1983, i.e., 30 days after the date of signature, in accordance with article 17.  
Vol. 1317, I-21935

of Finnish nationals or of foreigners normally residing and employed in Finland, or of French nationals or residents of France.

The participation of a performer who is not a national of one of the two States referred to in the preceding paragraph may be permitted, in view of the film's requirements, after consultation between the competent authorities of the two countries.

The competent authorities of the two countries shall determine by mutual agreement the conditions for participation in co-production films by nationals of third States with which there are agreements or conventions concerning freedom of movement of persons or freedom of residence.

*Article 5.* Studio scenes must be shot and films must be scored and developed in accordance with the following provisions.

Studio scenes shall be shot preferably in the country of the majority co-producer.

In any case, each co-producer shall be co-proprietor of the original negative (picture and sound), irrespective of where the negative is kept.

Each co-producer shall be entitled, in any case, to an inter-negative in his own language. If one of the co-producers waives this right, the negative shall be kept in a place chosen by mutual agreement by the co-producers.

In principle, the negative shall be developed at a laboratory in the majority country where the prints intended for use in that country shall also be made, and the prints intended for use in the minority country shall be made at a laboratory in the minority country.

*Article 6.* The competent authorities of the two countries shall periodically verify whether the balance between the two countries' contributions in the artistic and technical fields laid down in the provisions of this Agreement has been ensured and, if that is not the case, they shall take such measures as are deemed necessary.

*Article 7.* In principle, receipts shall be divided in proportion to the total contribution of each co-producer. The financial provisions adopted by the co-producers and the zones for sharing receipts shall be subject to the approval of the competent authorities of the two countries.

*Article 8.* Unless there are provisions to the contrary in the co-production contract, export arrangements for co-production films shall be made by the majority co-producer with the agreement of the minority co-producer.

In the case of films in which both sides participated equally, export arrangements shall be made, unless otherwise agreed by the Parties, by the co-producer having the nationality of the director. In the case of export arrangements with a country which imposes import restrictions, the film shall be charged, to the extent possible, against the quota of that of the two countries engaged in co-production which enjoys the more favourable régime.

*Article 9.* Credits, trailers and advertising material for co-production films shall indicate that the film is a Finnish-French co-production.

*Article 10.* At festivals and in competitions, co-produced films shall be presented as originating from the State of the majority co-producer, unless there is a different arrangement made by the co-producers and approved by the competent authorities of the two countries.

*Article 11.* In the co-production of short films, care must be taken in producing each film to achieve an overall balance artistically, technically and financially.

*Article 12.* The competent authorities of the two countries shall give favourable consideration on a case-by-case basis to the making of co-production films by Finland and France and countries with which either of them has co-production agreements.

*Article 13.* Subject to the laws and regulations in force, every facility shall be afforded for the travel and temporary residence of artistic and technical personnel working on co-production films and for the import and export to and from each country of material needed for the making and exploitation of such films (raw film, technical material, costumes, sets, advertising material, etc.).

## II. EXCHANGE OF FILMS

*Article 14.* Subject to the laws and regulations in force, no restriction shall be placed in either country on the sale, import exploitation and, in general, the dissemination of film prints of national origin.

Receipts from the sale and exploitation of films imported under this Agreement shall be transferred in implementation of the contracts concluded between the producers in accordance with the laws and regulations in force in each of the two countries.

## III. GENERAL PROVISIONS

*Article 15.* The competent authorities of the two countries shall communicate to each other full information on financial and technical questions concerning productions and exchanges of films and, in general, all particulars concerning relations between the two countries in respect of films or changes in laws or regulations which may affect them.

*Article 16.* The competent authorities of the two countries shall consider, if necessary, methods of implementing this Agreement in order to resolve any difficulties which arise in carrying out its provisions. They shall study such amendments as may be desirable with a view to developing co-operation in respect of films in the common interest of the two countries.

They shall meet, within the framework of a mixed commission on film-making, at the request of either of them, especially in the event of any substantial amendments to either the laws or the regulations applicable to the film industry.

*Article 17.* This Agreement shall enter into force 30 days after its signature. It is concluded for a period of two years from the date of its entry into force; it shall be automatically renewed for identical periods, unless denounced by one of the Contracting Parties three months before the date of its expiry.

IN WITNESS WHEREOF the undersigned, being duly authorized by their Governments, have signed this Agreement.

DONE at Paris on 2 February 1983 in duplicate, in the Finnish and French languages, both texts being equally authentic.

For the Government of the Republic of Finland:

PAR STENBÄCK

For the Government of the French Republic:

CLAUDE CHEYSSON

## A N N E X

### IMPLEMENTATION PROCEDURES

In order to benefit from the provisions of the Agreement, producers of each country must attach to their co-production applications, submitted to their respective authorities, one month before the shooting of the film is to begin, a set of documents including:

- A document concerning the acquisition of film rights for the economic use of the work;
- A detailed scenario;
- A list of the technical and artistic personnel of the two countries;
- A detailed cost estimate and financing plan;
- A production schedule;
- The co-production contract between the co-producing companies.

The competent authorities of the two countries shall transmit to each other such sets of documents as soon as they have been filed. The competent authorities of the country having the minority financial participation shall give their consent only after receiving the views of the authorities of the country having the majority financial participation.

## **APPENDIX 7**

## Contracts Act

(228/1929; amendments up to 449/1999 included)

### Chapter 1 — Conclusion of contracts

#### Section 1

- (1) An offer to conclude a contract and the acceptance of such an offer shall bind the offeror and the acceptor as provided for below in this chapter.
- (2) The provisions in this chapter shall not apply to contracts of standard form or to contracts which require performance in order to become effective, nor shall they apply where the contrary is expressly or implicitly stipulated in the offer or the acceptance or follows from trade usage or other practice.

#### Section 2

- (1) If the offeror has fixed a specified period of time for acceptance, he/she shall be deemed to have stipulated that the acceptance has to reach him/her within the said period of time.
- (2) If a specified period of time for acceptance has been fixed in the letter or telegram in which the offer is made, the period shall run from the date given on the letter, not including that day, or from the time of day when the telegram was handed to the telegraph office at the place of dispatch for transmission to the offeree. If the letter is not dated, it shall be deemed dated on the date stamped on the envelope.

#### Section 3

- (1) An offer made orally without granting respite for acceptance shall be accepted immediately; unless an immediate acceptance is given, the offer shall be deemed rejected.
- (2) If an offer is made in a letter or telegram or otherwise in a manner that makes an immediate acceptance impossible and no specific period of time has been fixed for acceptance, the acceptance shall reach the offeror within a period of time that could reasonably be contemplated by him/her at the time of making the offer. In determining this period of time, the offeror shall, unless the circumstances indicate otherwise, be entitled to presume that the offer reaches the offeree within due time and that the acceptance is dispatched without delay after the offeree has had a reasonable period of reflection and is not delayed in transmission; if the offer is made in a telegram or other manner indicating the offeror's wish for a prompt reply, the offeror shall likewise be entitled to presume that the acceptance is dispatched in the same manner or otherwise reaches him/her equally quickly.

#### Section 4

- (1) An acceptance that reaches the offeror too late shall be deemed to constitute a new offer made by the original acceptor.

- (2) However, the provision in paragraph (1) shall not apply if the acceptor has assumed that the acceptance has reached the offeror within due time and the offeror must have understood the same. If the offeror in that case does not wish to accept the acceptance, he/she shall, without undue delay, notify the acceptor thereof; otherwise a contract shall be deemed concluded by way of the acceptance.

#### Section 5

If an offer is rejected, it shall expire even if its period of validity has not yet lapsed.

#### Section 6

- (1) A reply that purports to be an acceptance but which, due to an addition, restriction or condition, does not correspond to the offer, shall be deemed a rejection constituting a new offer.
- (2) However, the provision in paragraph (1) shall not apply if the offeree has considered the reply to correspond to the offer and the offeror must have understood the same. If the offeror in that case does not wish to accept the reply, he/she shall, without undue delay, notify the offeree thereof; otherwise a contract shall be deemed concluded on the terms contained in the reply.

#### Section 7

An offer or an acceptance that is revoked shall not be binding, if the revocation reaches the person to whom it is addressed before, or at the same time as, the offer or acceptance comes to his/her attention.

#### Section 8

If the offeror has stated that an express acceptance is not required or if the circumstances indicate that he/she does not expect one, the offeree shall, nevertheless, upon request, let the offeror know whether he/she accepts the offer; otherwise the offer shall be deemed to have expired.

#### Section 9

- (1) A bid made at an auction shall bind the bidder until the bidding has been closed with regard to the item in question or until a higher bid is made, provided that it is not immediately rejected. Unless the seller has reserved himself/herself time to consider the bid, the highest bidder shall be entitled to immediately know whether his/her bid is accepted or not. If it has been announced that the item is in any event to be sold and if the highest bidder is someone other than the seller, the sale shall be concluded with the highest bidder; if two or more persons have made the same highest bid, the seller shall be entitled to choose which of the bids to accept.
- (2) In a reverse auction, the provisions in paragraph (1) on a higher or the highest bid shall apply correspondingly to a lower or the lowest bid.

## Chapter 2 — Authorisation

### Section 10

- (1) A person who has authorised another to conclude contracts or to enter into other transactions shall, directly in relation to a third person, acquire rights and become bound by way of the transactions entered into by the agent within the scope of his/her authority and in the name of the principal.

- (2) Where a person, by virtue of employment or otherwise by way of a contract concluded with another, holds a position which, according to law or custom, establishes a certain authority to act on behalf of the other, he/she shall be deemed, within the scope of that authority, empowered to conclude contracts or to enter into other transactions.

### Section 11

- (1) Where an agent has entered into a transaction against the instructions of the principal, the transaction shall not bind the principal if the third person knew or should have known that the agent was exceeding the scope of his/her authority.

- (2) Where an authorisation is based solely on a communication by the principal to the agent, transactions by the agent exceeding the scope of his/her authority shall not bind the principal even if the third person was in good faith.

### Section 12

An authorisation expressly communicated by the principal to a third person shall be revoked when an express communication by the principal revoking the authorisation reaches the third person.

### Section 13

- (1) An authorisation published by the principal in a newspaper shall be revoked by announcement in the same newspaper. An authorisation otherwise publicly announced shall be revoked by a similar announcement of the revocation.

- (2) If an authorisation cannot be revoked in accordance with the provisions in paragraph (1), the revocation shall be communicated in another equally effective manner. In that case the principal shall, upon request, be entitled to receive instructions as to the measures he/she should take from the public authority referred to in section 17.

### Section 14

An authorisation referred to in section 10(2) shall be revoked by removing the agent from the employment or other position upon which his/her authority was based.

### Section 15

- (1) An authorisation based on a document that is given to the agent in order to be presented to a third person shall be revoked by the principal reclaiming the said document of authorisation or by having it destroyed.
- (2) Upon the principal's request, the agent shall return the said document of authorisation.

### Section 16

Where more than one of the provisions in sections 12—15 apply to an authorisation, all such provisions shall be complied with. A third person who has been notified of the revocation of an authorisation in accordance with section 12 shall, however, not be entitled to invoke a failure of the principal to revoke the authorisation in another manner.

### Section 17

- (1) If a principal shows probable cause that a document of authorisation has been lost or that other reasons prevent him/her from regaining possession thereof without delay, the document may be declared void.

- (2) The petition to have a document of authorisation declared void shall be filed with the District Court of the residence of the petitioner. If the petitioner is not resident in Finland, the petition may be filed with the District Court in whose jurisdiction the petitioner is staying, or with the District Court of Helsinki. If the petition is admitted, the District Court shall publish an announcement in the Official Gazette to the effect that the document shall become void at the expiration of a given period of time. This period shall not be shorter than fourteen days from the publication of the announcement in the Gazette. The District Court shall declare the document void immediately at the expiration of the period, unless there is an impediment to the same. Where necessary, the District Court may also publish the announcement in one or more newspapers, at the expense of the petitioner, before it is published in the Official Gazette. (§10/1996)

### Section 18

An authorisation based only on a communication by the principal to the agent shall be revoked when a communication revoking the authorisation reaches the agent.

### Section 19

If the principal has a special reason to believe that, regardless of the fact that the authorisation has been revoked or that the document of authorisation has been declared void, the agent will, on the strength of the authorisation, enter into a transaction with a third person who cannot be presumed to be aware of the revocation, the principal shall, if possible, inform the said third person of the revocation of the authorisation. If he/she fails to do so and the person with whom transaction was entered into was in good faith, the principal cannot invoke the revocation of the authorisation against the said person.

### Section 20

If the principal, without revoking an authorisation in accordance with the provisions in sections 12—18, has forbidden the agent to exercise the authority or otherwise indicated that the authorisation is no longer valid, a transaction entered into by the agent shall not bind the principal if the third party knew or should have known of the said fact.

### Section 21

- (1) If the principal dies, an authorisation shall nonetheless remain valid, unless special circumstances require its revocation. Even under such circumstances, a transaction entered into by the agent shall bind the

decedent's estate if the third person neither knew nor should have known of the principal's death and its relevance to the agent's authority; if the authorisation is of the kind referred to in section 18, the transaction shall be binding only if also the agent, when entering into the transaction, neither knew nor should have known of the death and its relevance.

- (2) If a decedent's estate is surrendered into bankruptcy, a transaction that binds the estate according to paragraph (1) shall, against the creditors of the estate, have the same effect as it would have if it had been entered into by the parties to the estate.

#### Section 22 (449/1999)

If the competency of the principal is restricted, a transaction entered into by the agent shall have only such legal effects that it would have, had the principal himself/herself entered into it.

#### Section 23

If the property of the principal is surrendered into bankruptcy, a transaction thereafter entered into by the agent shall not bind the bankruptcy estate.

#### Section 24 (449/1999)

If the competency of the principal is restricted or if his/her property is surrendered into bankruptcy, the agent shall be entitled, before the guardian or the trustee of the bankruptcy estate can undertake measures, to enter, by virtue of the authorisation, into such transactions that are necessary in order to safeguard the principal or the estate against loss.

#### Section 25

- (1) A person purporting to be an agent of another, without being able to prove that he/she has acted in accordance with an authorisation or that the alleged principal has ratified the transaction or is otherwise bound thereby, shall compensate a third person for any loss suffered because the transaction does not bind the alleged principal.

- (2) However, the provisions in paragraph (1) shall not apply if the third person knew or should have known that the authorisation did not exist or was exceeded or that the authorisation of the person purporting to be an agent was invalid due to a special reason that was unknown to the agent and that the third person could not reasonably expect the agent to have known of.

#### Section 26

The provisions in this chapter on authorisation shall apply correspondingly to an authorisation to represent a principal with regard to transactions directed at him/her.

#### Section 27

- (1) The provisions in section 8 of the Procuration Act (130/1979) shall apply to the revocation of a procuration entered in the trade register. If the revocation has been entered in the trade register and announced in due manner, the owner of the trade name need not revoke the procuration in any other way.
- (2) The provisions in chapter 2, section 3, of the Code of Real Estate (540/1995) shall apply to the form of an authorisation to convey, exchange or mortgage real property. If such an authorisation has been revoked or declared void in

accordance with the provisions in sections 15 and 17, the authorisation shall be without effect.

- (3) The provisions in this chapter according to which a transaction entered into by the agent does not, in given situations, bind the principal shall be without prejudice to the provisions in chapter 18, section 3 of the Code of Commerce on the effect of any benefit received by the principal from such a transaction.<sup>1</sup>

### Chapter 3 — **Invalidity and adjustment of contracts** (956/1982)

#### Section 28

- (1) A transaction into which a person has been coerced shall not bind him/her if the coercion consisted of physical violence or a threat involving imminent danger to life or health (grave duress).

- (2) However, if the coercion was exercised by a third person and the person to whom the transaction was directed was in good faith, the coerced party shall, if he/she wants to invoke the said coercion in relation to the other party, without undue delay after the coercion has ceased notify that party thereof at the risk of the transaction otherwise becoming binding.

#### Section 29

A transaction entered into under coercion not constituting grave duress, as referred to in section 28, shall not bind the coerced party if the coercion was exercised by the person to whom the transaction was directed or if this party knew or should have known that the other party was coerced into the transaction.

#### Section 30

A transaction into which a person has been fraudulently induced shall not bind him/her if the person to whom the transaction was directed was himself/herself guilty of such inducement or if he/she knew or ought to have known that the other party was so induced.

#### Section 31

- (1) If anyone, taking advantage of another's distress, lack of understanding, imprudence or position of dependence on him/her, has acquired or exacted a benefit which is obviously disproportionate to what he/she has given or promised or for which there is to be no consideration, the transaction thus effected shall not bind the party so abused.

- (2) The same shall apply if a third person was guilty of conduct referred to in paragraph (1) and the person to whom the transaction was directed knew or should have known thereof.

- (3) The provisions in chapter 16 of the Maritime Act (167/1939) shall apply to salvage agreements.

<sup>1</sup> According to chapter 18, section 3 of the Code of Commerce the principal shall not be bound by or liable for his/her agent's acts falling outside the scope of the agent's authority unless it is established that those acts were to the principal's benefit.



#### Section 32

- (1) Where a message containing an expression of a person's will, due to a misprint or other error on his/her part, differs from what he/she intended, the message shall not bind him/her if the recipient knew or should have known of the misprint or error.

- (2) Where a message containing an expression of a person's will is transmitted by telegram or orally through a messenger and it changes due to an error in transmission or a mistake made in its delivery by the messenger, the message shall not bind the sender in the form in which it reached the other party even if the recipient was in good faith. After learning of the change the sender shall, however, inform the recipient without undue delay that he/she does not want to be bound by the changed message; otherwise, and provided that the recipient was in good faith, the message shall be binding in the form it reached the recipient.

#### Section 33

A transaction that would otherwise be binding shall not be enforceable if it was entered into under circumstances that would make it incompatible with honour and good faith for anyone knowing of those circumstances to invoke the transaction and the person to whom the transaction was directed must be presumed to have known of the circumstances.

#### Section 34

Where a simulated document has been drawn up and the holder under the document of a claim or other right has assigned the said right, the assignee shall be entitled to enforce the right if he/she acquired it in good faith.

#### Section 35

- (1) Where a bearer instrument or other negotiable instrument has, through negotiation, been acquired by someone in good faith, the person who has signed the instrument shall be bound by it even if he/she has lost possession thereof against his/her will.
- (2) Even if a creditor has, against his/her will, lost possession of a receipt for money, payment made by the debtor against the receipt and in good faith after the maturity of the debt shall, nonetheless, be valid as against the creditor.

#### Section 36 (956/1982)

- (1) If a contract term is unfair or its application would lead to an unfair result, the term may be adjusted or set aside. In determining what is unfair, regard shall be had to the entire contents of the contract, the positions of the parties, the circumstances prevailing at and after the conclusion of the contract, and to other factors.
- (2) If a term referred to in paragraph (1) is such that it would be unfair to enforce the rest of the contract after the adjustment of the term, the rest of the contract may also be adjusted or declared terminated.
- (3) A provision relating to the amount of consideration shall also be deemed a contract term.

- (4) The provisions of the Consumer Protection Act (38/1978) apply to the adjustment of consumer contracts. (1260/1994)

#### Section 37 (956/1982)

A term under which property pledged as security for an obligation is forfeited if the obligation is not discharged shall be void.

#### Section 38 (956/1982)

A contract under which a person, in order to prevent or restrict competition, has undertaken not to engage in a certain activity or not to conclude an employment contract with another person engaging in such activity shall not bind the party who has made such a promise to the extent that it unreasonably restricts his/her freedom.

### Chapter 4 — Miscellaneous provisions

#### Section 39

If, according to this Act, the validity of a contract or other transaction depends on the fact that the person to whom the transaction was directed neither knew nor should have known of a circumstance or that he/she otherwise was in good faith, regard shall be had to what he/she knew or should have known when he/she learned of the transaction. However, if special circumstances call for it, regard may also be had to what the person knew or should have known after the said time but before he/she relied on the contract or transaction.

#### Section 40

- (1) If a person, according to this Act, shall communicate something to another at the risk that a contract shall otherwise be deemed concluded or an offer accepted or that a transaction entered into by or on behalf of him/her shall bind him/her and if the said communication has been handed in for dispatch by mail or telegraph or dispatched in another appropriate manner, a delay or the non-delivery of the said communication shall not be deemed to constitute a failure by the said person to fulfil his/her duty of communication.
- (2) The provisions in sections 7, 12 and 18 shall apply to the revocation of an offer, reply or authorisation.

#### Section 41

This Act shall repeal chapter 1, section 1 of the Code of Commerce and amend any previous provisions that are contrary to the provisions in this Act.

#### Section 42

This Act shall enter into force on 1 July 1929.



## **APPENDIX 8**

Ministry of Education and Culture  
Finland

FINLAND

COPYRIGHT LEGISLATION

2010

Unofficial Translations in English

Only statutes published in Statutes of Finland (Säädöskokoelma)  
in Finnish and Swedish are legally binding

Contents:

COPYRIGHT ACT (Act No. 404, of July 8, 1961)

THE PENAL CODE OF FINLAND: CHAPTER 49 Violation of certain  
intellectual property rights (Act No. 578, of April 21, 1995)

COPYRIGHT DECREE (Decree No. 574, of April 21, 1995)

DECREE on the application of the Copyright Act in certain cases to protected  
items originating in States belonging to the European Economic Area  
(Decree No. 575, of April 21, 1995)

COPYRIGHT ACT 8.7.1961/404

Amendments up to 31.10.2008/663 included

CHAPTER I

Subject matter and scope

Section 1

- (1) A person who has created a literary or artistic work shall have copyright therein, whether it be a fictional or descriptive representation in writing or speech, a musical or dramatic work, a cinematographic work, a photographic work or other work of fine art, a product of architecture, artistic handicraft, industrial art, or expressed in some other manner. (24.3.1995/446)
- (2) Maps and other descriptive drawings or graphically or three-dimensionally executed works and computer programs shall also be considered literary works. (11.1.1991/34)

Economic rights (14.10.2005/821)

Section 2 (14.10.2005/821)

- (1) Within the limitations imposed hereinafter, copyright shall provide the exclusive right to control a work by reproducing it and by making it available to the public, in the original form or in an altered form, in translation or in adaptation, in another literary or artistic form, or by any other technique.
- (2) The reproduction of a work shall comprise making copies of the work in whole or in part, directly or indirectly, temporarily or permanently and by any means or in any form whatsoever. The reproduction of a work shall also comprise the transfer of the work on to another device, by which it can be reproduced or communicated.
- (3) A work is made available to the public when:
  - 1. it is communicated to the public by wire or wireless means, including communication in a way which enables members of the public to access the work from a place and at a time individually chosen by them,
  - 2. it is publicly performed to an audience present at a performance;
  - 3. a copy thereof is offered for sale, rental or lending or it is otherwise distributed to the public; or
  - 4. it is publicly displayed without the aid of a technical device.
- (4) A performance and communication to the public shall also comprise performance and communication to a comparatively large closed circle for purposes of gain.

Section 3

- (1) When copies of a work are made or when the work is made available to the public in whole or in part, the name of the author shall be stated in a manner required by proper usage.
- (2) A work may not be altered in a manner which is prejudicial to the author's literary or artistic reputation, or to his individuality; nor may it be made available to the public in such a form or context as to prejudice the author in the manner stated.
- (3) The right conferred to the author by this section may be waived by him with binding effect only in regard of use limited in character and extent.

Section 4

- (1) A person who translates or adapts a work or converts it into some other literary or artistic form shall have copyright in the work in the new form, but shall not have the right to control it in a manner which infringes the copyright in the original work.
- (2) If a person, in free connection with a work, has created a new and independent work, his copyright shall not be subject to the right in the original work.

**Section 5**

A person who, by combining works or parts of works, creates a literary or artistic work of compilation shall have copyright therein, but his right shall be without prejudice to the rights in the individual works.

**Section 6**

If a work has two or more authors whose contributions do not constitute independent works, the copyright shall belong to the authors jointly. However, each of them is entitled to bring an action for infringement.

**Section 7**

(1) The person whose name or generally known pseudonym or pen name is indicated in the usual manner on the copies of a work or when the work is made available to the public, shall be deemed to be the author, unless otherwise demonstrated.

(2) If a work is published without the name of the author being indicated in the manner described in subsection 1, the editor, if he is named, and otherwise the publisher, shall represent the author until his name is indicated in a new edition of the work or notified to the competent Ministry.

**Section 8**

(1) A work shall be considered to have been made public when it has lawfully been made available to the public.

(2) A work shall be regarded as published when copies thereof have, with the consent of the author, been placed on sale or otherwise distributed to the public. (31.7.1974/648)

**Free works** (14.10.2005/821)**Section 9** (14.10.2005/821)

(1) There shall be no copyright:

1. in laws and decrees;
  2. in resolutions, stipulations and other documents which are published under the Act on the Statutes of Finland (188/2000) and the Act on the Regulations of Ministries and other Government Authorities (188/2000);
  3. treaties, conventions and other corresponding documents containing international obligations;
  4. decisions and statements issued by public authorities or other public bodies;
  5. translations of documents referred to in paragraphs 1–4 made by or commissioned by public authorities or other public bodies.
- (2) The provisions of subsection 1 shall not apply to independent works contained in the documents referred to in the subsection.

**Other immaterial rights** (14.10.2005/821)**Section 10** (23.8.1971/669)

(1) Notwithstanding the registration of a work as a design under other applicable statutes, its author may have copyright therein by virtue of this Act.

(2) Rights in a photographic picture shall additionally be governed by the provisions of section 49a. Legal protection of rights in layout-designs of integrated circuits has been provided separately. (24.3.1995/446)

**CHAPTER 2****Limitations on copyright and provisions concerning extended collective licence**  
(14.10.2005/821)**General provisions** (14.10.2005/821)**Section 11** (14.10.2005/821)

(1) The provisions of this Chapter do not limit the rights conferred to the author by section 3 to a larger degree than as provided in section 25 e.

(2) If a work is reproduced or made available to the public under the provisions of this Chapter, the author's name and the source must be indicated to the extent and in a manner required by proper usage. The work may not be altered without the author's consent more than necessitated by the permitted use.

(3) A copy of a work made by virtue of a limitation on copyright as provided in this Chapter may be, for the purpose determined in the limitation, distributed to the public and used in a public performance.

(4) The provisions of subsection 3 shall correspondingly apply to use by virtue of extended collective licence.

(5) A limitation on copyright as provided in this Chapter does not permit the reproduction of a copy of a work which has been made or made available to the public contrary to section 2 or whose technological measures have been circumvented in violation of section 50a(1). The provisions of this subsection shall not, however, pertain to the use of works under sections 1 la, 16, 16a–16c or 22 or under section 25d(2) or (5).

**Temporary reproduction** (14.10.2005/821)**Section 11a** (14.10.2005/821)

(1) The provisions of section 2 in regard to the right to make copies of a work shall not apply to temporary reproduction:

1. which is transient or incidental;
  2. which is an integral and essential part of a technological process;
  3. the sole purpose of which is to enable a transmission of a work in a network between third parties by an intermediary or a lawful use of a work; and
  4. which has no independent economic significance.
- (2) The provisions of subsection 1 shall not apply to a computer program or to a database.

**Reproduction for private use** (24.3.1995/446)**Section 12** (24.3.1995/446)

(1) Anyone may make single copies for his private use of a work that has been made public. The copies thus made may not be used for other purposes.

(2) It is also permitted to have copies made by a third party for the private use of the party ordering the copies.

(3) The provisions of subsection 2 shall not apply to the reproduction of musical works, cinematographic works, utility articles or sculptures, or the reproduction of any other works of art by artistic means.

(4) The provisions of this section shall not apply to a computer-readable computer program, to the making of a computer-readable copy of a computer-readable database, or to the construction of a work of architecture. (3.4.1998/250)

**Photocopying** (14.10.2005/821)

**Section 13** (14.10.2005/821)

A published work may be reproduced by photocopying or by corresponding means by virtue of extended collective licence as provided in section 26.

**Use for internal communication** (14.10.2005/821)

**Section 13a** (14.10.2005/821)

(1) A piece of writing published in a printed or by corresponding means reproduced newspaper or periodical, and an illustration accompanying the text, may be reproduced by virtue of extended collective licence, as provided in section 26, for use in the internal communication of an authority, a business enterprise and an organisation, and the copies thus made may be used for communication to the public for said purpose by means other than transmitting on radio or television. The provisions of this subsection shall not apply to reproduction by photocopying or by corresponding means.

(2) A work included in a current affairs or news programme transmitted on radio or television may be reproduced in single copies for use within a short period of time after the reproduction for internal information by an authority and a business enterprise, as well as by another person and organisation.

(3) The provisions of subsection 1 shall not apply to a work whose author has prohibited the reproduction or communication of the work.

**Use of works for educational activities and scientific research** (14.10.2005/821)

**Section 14** (14.10.2005/821)

(1) A work made public may, by virtue of extended collective licence, as provided in section 26, be reproduced for use in educational activities or in scientific research and be used in this purpose for communication to the public by means other than transmitting on radio or television. The provisions of this subsection shall not apply to reproduction by photocopying or by corresponding means.

(2) In educational activities, a work made public, performed by a teacher or a student, may be reproduced by direct recording of sound or image for temporary use in educational activities. A copy thus made may not be used for other purposes.

(3) Parts of a literary work that has been made public or, when the work is not extensive, the whole work, may be incorporated into a test constituting part of the matriculation examination or into any other corresponding test.

(4) The provisions of subsection 1 concerning works other than transmitted on radio or television shall not apply to a work whose author has prohibited the reproduction or communication of the work.

**Reproduction in certain institutions** (24.3.1995/446)

**Section 15** (24.3.1995/446)

In hospitals, senior citizens' homes, prisons and other similar institutions, copies of works made public, included in radio and television transmissions, may be made by audio and video recording for temporary use in the institution within a short period from the recording.

**Reproduction in archives, libraries and museums** (24.3.1995/446)

**Section 16** (14.10.2005/821)

An archive, and a library or a museum open to the public, to be determined in a Government Decree, may, unless the purpose is to produce direct or indirect financial gain, make copies of a work in its own collections:

1. for the purpose of preserving material and safeguarding its preservation;
2. for the purpose of technically restoring and repairing material;
3. for the purpose of administering and organising collections and for other internal purposes required by the maintenance of the collection;
4. for the purpose of supplementing a deficient item or completing a work published in several parts if the necessary complement is not available through commercial distribution or communication.

**Reproduction of works for the public and communication of works to the public** (14.10.2005/821)

**Section 16a** (14.10.2005/821)

(1) An archive, and a library open to the public, to be determined in a Government Decree, may, unless the purpose is to produce direct or indirect financial gain:

1. make copies of a work in its collections which is susceptible to damage by photocopying or by corresponding means and make them available to the public through lending if the work is not available through commercial distribution or communication;
2. where seen appropriate, make copies by photocopying or by corresponding means of individual articles in literary or artistic works of compilation, newspapers or periodicals and of short passages in other published works in its collections to be handed over to the borrowers for their private use in lieu of the volumes and booklets wherein they are contained.

(2) An archive, and a library or a museum open to the public, to be determined in a Government Decree, may, unless the purpose is to produce direct or indirect financial gain, communicate a work made public that it has in its collections, to a member of the public for purposes of research or private study on a device reserved for communication to the public on the premises of the institution. This shall be subject to the provision that the communication can take place without prejudice to the purchasing, licensing and other terms governing the use of the work and that the digital reproduction of the work other than reproduction required for use referred to in this subsection is prevented, and provided that the further communication of the work is prevented.

**Use of works in libraries preserving cultural material** (28.12.2007/1436)

**Section 16b** (28.12.2007/1436)

(1) A library entitled to a legal deposit of a copy of a work under the Act on Deposit and Preservation of Cultural Material (1433/2007) may:

1. use the copy it has in its collections in the manner referred to in sections 16 and 16a and subject to the terms laid down in these sections;
2. communicate a work made public that it has in its collections to a member of the public for purposes of research or private study on a device reserved for communication to the public, if the digital reproduction of the work other than reproduction required for use referred to in this paragraph is prevented and if the further communication of the work is prevented, on the premises of a library in whose collections the material is deposited under the Act on Deposit and Preservation of Cultural Material, and in the Library of Parliament and in the National Audiovisual Archive;
3. make copies of works made available to the public in information networks for inclusion in its collections;
4. make a copy for inclusion in its collections of a published work which it needs to acquire as part of the library collection but which is not available through commercial distribution or communication.

(2) The provisions of paragraphs 1 and 4 of subsection 1, shall also apply to libraries in whose collections the library referred to in subsection 1 deposits the material under the

Act on Deposit and Preservation of Cultural Material.

*Use of works in the National Audiovisual Archive (28.12.2007/1436)*

**Section 16c (28.12.2007/1436)**

(1) The National Audiovisual Archive may:

1. use a work in its collections in the manner referred to in sections 16 and 16a and subject to the terms laid down in these sections;
2. communicate a work in its collections to a member of the public for purposes of research or private study by means of a device reserved for communication to the public on devices located on the premises of a library referred to in section 16b, in the Library of Parliament, and in the Department of Journalism and Mass Communication of the University of Tampere, if the digital reproduction of the work other than reproduction required for the use is prevented and if the further communication of the work is prevented;
3. make copies of works made available to the public by transmission on radio or television for inclusion in its collections;
- (2) The provisions of paragraphs 1 and 2 of subsection 1 shall not apply to a cinematographic work deposited by a foreign producer.
- (3) A work in the collections of the National Audiovisual Archive, with the exception of a cinematographic work deposited by a foreign producer, may be used for purposes of research and higher education in cinematography.
- (4) The provisions of subsections 1–3 shall also apply to material subject to legal deposit, stored in storage facilities approved in accordance with the Act on Deposit and Preservation of Cultural Material.

***Use of works in archives, libraries and museums by virtue of extended collective licence (14.10.2005/821)***

**Section 16d (14.10.2005/821)**

- (1) An archive, and a library or a museum open to the public, to be determined in a Government Decree, may, by virtue of extended collective licence, as provided in section 26:
  1. make a copy of a work in its collections in cases other than those referred to in sections 16 and 16a–16c;
  2. communicate a work in its collections to the public in cases other than those referred to in sections 16a–16c.
- (2) The provisions of subsection 1 shall not apply to a work whose author has prohibited the reproduction or communication of the work.

***Further provisions concerning the use of works in archives, libraries and museums (14.10.2005/821)***

**Section 16e (14.10.2005/821)**

- (1) In cases referred to in sections 16, 16a and 16d, provisions may be issued by Government Decree regarding the archives and the libraries and museums open to the public, which are authorised under these sections to use works, or who may apply the provisions on extended collective licence, if
  1. the activities or mission of the institution has been enacted by an Act;
  2. the institution has been assigned a specific archival, preservation or service function in legislation;
  3. the activities of the institution serve scientific research to a significant degree; or
  4. the institution is owned by the State.
- (2) Further provisions may be enacted by Government Decree concerning reproduction under section 16 and sections 16a–16c and the use of the copies thus made.

- (3) Further provisions may be enacted by Government Decree concerning the communication of a work to a member of the public under sections 16a–16c.

***Making works available to persons with disabilities (14.10.2005/821)***

**Section 17 (14.10.2005/821)**

- (1) Copies of a published literary work, a published musical work or a published work of fine art may be made by means other than recording sound or moving images for use by people with visual impairments and others who, owing to a disability or illness, cannot use the works in the ordinary manner. The copies thus made may be used for communication to persons referred to above by means other than transmission on radio or television.
- (2) A Government Decree shall be issued concerning the institutions entitled to make copies of a published literary work by sound recording for use by visually impaired persons and others who, owing to a disability or illness, cannot use the works in the ordinary manner, to be lent, sold or used in communication by means other than radio or television transmission.
- (3) A Government Decree shall be issued concerning the institutions entitled to make copies of a published work in sign language for the deaf and persons with auditory impairments who cannot use the works in the ordinary manner, to be lent, sold or used in communication by means other than radio or television transmission.
- (4) The author shall have a right to remuneration for the making of copies for sale under subsections 2 and 3 or the communication of a work to a disabled or other person so that the person will permanently have a copy of the work.
- (5) The provisions of subsections 1–4 shall not apply to reproduction or communication for commercial purposes.
- (6) The prerequisite in regard of an institution referred to in subsections 2 and 3 is that the institution, to be determined by Decree, does not seek commercial or economic gain, that the mission of the institution includes services to persons with disabilities and that the institution has the financial and operational facilities to pursue such activity. Further provisions may be enacted by Government Decree concerning the technical properties and labelling of the copies of works made and works communicated to the public under subsections 2 and 3.

***Literary or artistic works of compilation used in education (24.3.1995/446)***

**Section 18 (14.10.2005/821)**

- (1) Minor parts of literary or musical works or, if not extensive, the entire work may be incorporated into a literary or artistic work of compilation consisting of works by several authors which is printed or produced by corresponding means and intended for use in education, after five years have elapsed from the year of publication. A work of art made public may be reproduced in pictorial form in connection with the text. The provisions of this subsection shall not apply to a work created for use in education.
- (2) The author shall have a right to remuneration for incorporation referred to in subsection 1.

***Distribution of copies of a work (24.3.1995/446)***

**Section 19 (24.3.1995/446)**

- (1) When a copy of a work has been sold or otherwise permanently transferred with the consent of the author within the European Economic Area, the copy may be further distributed. (14.10.2005/821)
- (2) The provisions of subsection 1 shall not apply to making a copy of a work available to the public by rental or by a comparable legal transaction. However, a product of architecture, artistic handicraft or industrial art may be rented to the public.
- (3) The provisions of subsection 1 shall not apply to making a copy of a cinematographic

work or of computer-readable computer program available to the public by lending.

(4) The author shall have a right to remuneration for the lending of copies of a work to the public, with the exception of products of architecture, artistic handicraft and industrial art. Remuneration may be claimed only for lending which has taken place within the last three calendar years. However, the right to remuneration shall not subsist if the lending takes place in a library serving research or educational activities. The right referred to in this subsection shall be governed by the provisions of section 41. (22.12.2006/1228)

(5) A copy of a work which has, with the consent of the author, been sold or otherwise permanently transferred outside the European Economic Area may in accordance with the provisions of subsection 1, under the conditions laid down in subsection 3, be:

1. made available to the public by lending;
2. sold or otherwise permanently transferred if the copy to be transferred is one acquired by a private individual for private use;
3. sold or otherwise permanently transferred if the copy to be transferred is one acquired by an archive, or by a library or a museum open to the public, for its own collections. (14.10.2005/821)

#### Section 19a (22.12.2006/1228)

(1) The remuneration for the lending in a public library referred to in section 19(4) shall be paid through an organisation which has been approved by the Ministry of Education and which represents a large number of authors whose works are lent in a public library.

(2) The Ministry of Education shall approve the organisation on application for a fixed period, for a maximum of five years. The organisation to be approved shall be financially sound and capable of managing matters in accordance with the approval decision. The organisation shall annually submit an account to the Ministry of Education of the actions it has carried out pursuant to the approval decision. The organisation, or organisations, where the representation of the authors can be achieved only through the approval of several organisations, must represent a substantial proportion of the authors of works of different fields whose works are lent from the public libraries. The approval decision may also lay down terms guiding the practical operation of the organisation in general.

(3) The decision of the Ministry of Education shall be complied with, notwithstanding an appeal pending, until the matter has been resolved by means of a valid decision. The approval may be reversed if the organisation commits serious or essential breaches or dereliction of duty in breach of the approval decision and its terms and if notices to comply or warnings issued to the organisation have not led to the rectification of the shortcomings in its operation.

#### Display of a copy of a work (14.10.2005/821)

##### Section 20 (14.10.2005/821)

When a copy of a work has, with the consent of the author, been sold or otherwise permanently transferred, the copy may be used for public display of the work.

#### Public performance (24.3.1995/446)

##### Section 21 (14.10.2005/821)

(1) A published work may be publicly performed in connection with divine services and education.

(2) A published work may also be publicly performed at an event in which the performance of works is not the main feature and for which no admission fee is charged and which otherwise is not arranged for the purpose of gain.

(3) The provisions of subsections 1 and 2 shall not apply to dramatic or cinematographic works. The public performance of a cinematographic work for purposes of research and higher education on cinematography is governed by section 16c.

#### Quotation (24.3.1995/446)

##### Section 22 (24.3.1995/446)

A work made public may be quoted, in accordance with proper usage to the extent necessary for the purpose.

#### An article on a current topic (24.3.1995/446)

##### Section 23

(1) Articles in newspapers and periodicals on current religious, political, or economic topics may be included in other newspapers and periodicals, unless reproduction is expressly prohibited.

(24.3.1995/446)

(2) The author's name and the source must always be indicated. (14.10.2005/821)

#### Concert programmes (24.3.1995/446)

##### Section 24 (14.10.2005/821)

When a musical work is performed with text, the text may be made available to the audience in a concert programme or a corresponding leaflet produced by printing, photocopying or by corresponding means.

#### Use of works of art (14.10.2005/821)

##### Section 25

(1) Works of art made public may be reproduced in pictorial form in material connection with the text:

1. in a critical or scientific presentation; and
  2. in a newspaper or a periodical when reporting on a current event, provided that the work has not been created in order to be reproduced in a newspaper or a periodical. (24.3.1995/446)
- (2) When a copy of a work of art has, with the consent of the author, been sold or otherwise permanently transferred, the work of art may be incorporated into a photograph, a film, or a television programme if the reproduction is of a subordinate nature in the photograph, film or programme. (14.10.2005/821)

#### Use of works of art in catalogues and in information and pictorial representation of a building (14.10.2005/821)

##### Section 25a (14.10.2005/821)

(1) A work of art which is included in a collection or displayed or offered for sale, may be reproduced in pictorial form for the purpose of disseminating information about the exhibition or sale or for a catalogue produced by printing, photocopying or by other corresponding means.

(2) A work of art which is included in a collection, displayed or offered for sale may be reproduced by the maintainer of the collection, the exhibitor or the vendor by virtue of extended collective licence, as provided in section 26, in cases other than those referred to in subsection 1, and the copies thus made may be used for communication to the public by means other than transmission on radio or television. The provisions of this subsection shall not apply to a work of art whose author has prohibited the reproduction or communication of the work.

(3) A work of art may be reproduced in pictorial form in cases other than those referred to in subsections 1 and 2 if the work is permanently placed at, or in the immediate vicinity of, a public place. If the work of art is the leading motive of the picture, the picture may not



be used for the purpose of gain. A picture having a material connection to the text may, however, be included in a newspaper or a periodical.  
(4) A building may be freely reproduced in pictorial form.

**Presentation of a current event** (24.3.1995/446)

**Section 25b** (24.3.1995/446)

When a current event is presented in a radio or television broadcast or as a film, a work visible or audible in the current event may be included in the presentation to the extent necessary for the informational purpose.

**Use of public statements** (24.3.1995/446)

**Section 25c** (24.3.1995/446)

Oral or written statements made in a public representative body, before an authority or at a public consultation on a matter of public interest may be reproduced or communicated to the public without the author's consent. However, a statement and a written or similar work presented as evidence in a case or in a matter may be reproduced or communicated to the public only in the reporting of the case or matter and only to the extent necessary for the purposes of such reporting. The author shall have the exclusive right to publish a compilation of his statements.

**Public documents and administration of justice** (24.3.1995/446)

**Section 25d** (24.3.1995/446)

- (1) Copyright shall not limit the statutory right to obtain information from a public document.
- (2) A work may be used when the administration of justice or public security so requires.
- (3) A work used pursuant to subsections 1 and 2 above may be quoted in accordance with section 22.
- (4) Works referred to in section 9(2) of this Act may be reproduced or communicated to the public in connection with a document referred to in subsection 1 of said section and used separately from the document for the administrative or other purpose to which the document relates. (14.10.2005/821)
- (5) Anyone who communicates a work to the public by radio or television transmission or by other means may make a copy or have a copy made or retain a copy of the transmitted or communicated work for the purpose of discharging a statutory duty to record or store. (14.10.2005/821)

**Altering of buildings and utilitarian articles** (24.3.1995/446)

**Section 25e** (24.3.1995/446)

Buildings and utilitarian articles may be altered by the owner without the consent of the author, if required by technical or practical reasons.

**Original radio and television transmissions** (14.10.2005/821)

**Section 25f** (14.10.2005/821)

- (1) A broadcasting organisation may transmit a work under extended collective licence, as provided in Section 26. The provisions of this subsection shall not, however, apply to a dramatic work, a cinematographic work and any other work if the author has prohibited the transmission of the work.
- (2) If a broadcasting organisation is entitled to transmit a work, it may make a copy of the work for use in its own broadcasts for a maximum of four times during one year.
- (3) For using a work more often or over a longer period than provided in subsection 2, a

broadcasting organisation may make a copy or have a copy made of the work by virtue of extended collective licence, as provided in section 26.

- (4) The provisions of subsection 1 shall not apply to the retransmission of a work in a radio or television transmission simultaneously with the original transmission without altering the transmission.

- (5) The provisions of subsection 1 shall apply to radio or television transmissions by satellite only if the satellite transmission is simultaneous with a terrestrial transmission by the same broadcasting organisation.

**A new transmission of a television programme stored in archives** (14.10.2005/821)

**Section 25g** (14.10.2005/821)

- (1) A broadcasting organisation may transmit anew work made public by virtue of extended collective licence, as provided in section 26, if the work is included in a television programme produced by the broadcasting organisation and transmitted before the first of January 1985.

- (2) The provisions of subsection 1 shall not apply to a work whose author has prohibited the transmission.

**Retransmission of a radio or television transmission** (14.10.2005/821)

**Section 25h** (24.3.1995/446)

- (1) A work included in a radio or television transmission may be retransmitted without altering the transmission by virtue of extended collective licence, as provided in section 26, for reception by the public simultaneously with the original transmission. (14.10.2005/821)

- (2) The provisions of subsection 1 shall not apply to cable retransmission of a work included in a transmission originating in another State belonging to the European Economic Area, provided its author has assigned the right to its cable retransmission to the broadcasting organisation whose transmission the retransmission concerns.

- (3) The authorisations concerning the cable retransmission of works included in a transmission referred to in subsection 2 above, shall be granted simultaneously.

- (4) The provisions of subsection 1 shall be applicable to a radio and television transmission by wire only if the transmission originates in another State belonging to the European Economic Area.

**Retransmission of programmes based on the must carry obligation to transmit programmes** (14.10.2005/821)

**Section 25i** (14.10.2005/821)

A telecommunications enterprise providing a network service in a cable television network which is primarily used to transmit television and radio programmes and which a significant number of the end-users of the network use as their primary means of receiving television and radio programmes may retransmit by wire for reception by the public a work included in the television or radio broadcast referred to in section 134 of the Communications Market Act (393/2003) simultaneously with the original transmission without altering the transmission.

**Special provisions concerning computer programs and databases** (3.4.1998/250)

**Section 25j** (24.3.1995/446)

- (1) Whoever has legally acquired a computer program may make such copies of the program and make such alterations to the program as are necessary for the use of the program for the intended purpose. This shall also apply to the correction of errors.

- (2) Whoever has a right to use a computer program may make a back-up copy of the program, if necessary for the use of the program.
- (3) Whoever has a right to use a computer program shall be entitled to observe, study or test the functioning of the computer program in order to determine the ideas and principles which underlie any element of the program if he does so while performing the acts of loading, displaying, running, transmitting or storing the program.
- (4) Whoever has a right to use a database may make copies of it and perform all other acts necessary for accessing the database and for normal use of its contents. (3.4.1998/250)
- (5) Any contractual provision limiting use in accordance with subsections 2–4 shall be without effect. (3.4.1998/250)

#### **Section 25k (24.3.1995/446)**

(1) The reproduction of the code of a program and the translation of its form shall be permissible if these acts are indispensable for obtaining information by means of which the interoperability of an independently created computer program with other programs can be achieved and that the following conditions are met:

1. these acts are performed by the licensee or by another person having the right to use a copy of the program or, on their behalf, by a person authorised to do so;
2. the information necessary for achieving interoperability has not previously been readily available to the persons referred to in paragraph 1; and
3. these acts are confined to the parts of the original program which are necessary for achieving interoperability.

(2) The information obtained under the provisions of subsection 1 shall not, by virtue of these provisions:

1. be used for purposes other than to achieve the interoperability of the independently created computer program;
2. be given to others, unless necessary for the interoperability of the independently created computer program; or
3. be used for the development, production or marketing of a computer program substantially similar in its expression, or for any other act which infringes copyright.

(3) Any contractual provision limiting the use of a computer program in accordance with this section shall be without effect.

#### **Extended collective licence (24.3.1995/446)**

#### **Section 26 (14.10.2005/821)**

(1) The provisions of this Act regarding extended collective licences shall apply when the use of a work has been agreed upon between the user and the organisation which is approved by the Ministry of Education and which represents, in a given field, numerous authors of works used in Finland. A licensee authorised by virtue of extended collective licence may, under terms determined in the licence, use a work in the same field whose author the organisation does not represent.

(2) The Ministry of Education shall approve the organisation on application for a fixed period, for a maximum of five years. The organisation to be approved must have the financial and operational prerequisites and capacity to manage the affairs in accordance with the approval decision. The organisation shall annually submit an account to the Ministry of Education of the measures it has taken pursuant to the approval decision. The organisation, or organisations, where the representation of the authors can be achieved only through the approval of several organisations, must represent a substantial proportion of the authors of works of different fields whose works are used under a given provision on extended collective licence. When several organisations are approved to grant licence for a given use of works, the terms of the approval decisions shall ensure, where needed, that the licences are granted simultaneously and on compatible terms. The approval decision may also lay down terms guiding practical licensing in general for the organisation.

(3) The decision of the Ministry of Education shall be complied with, notwithstanding an appeal pending until the matter has been resolved by means of a valid decision. The approval may be reversed if the organisation commits serious or substantial offences or dereliction of duty in breach of the approval decision and its terms and if notices to comply or warnings issued to the organisation have not led to the rectification of the shortcomings in its operation.

(4) Possible stipulations by the organisation referred to in subsection 1 concerning the distribution of remunerations for the reproduction, communication or transmission of works among the authors, it represents or the use of the remunerations for the authors' common purposes shall also apply to authors whom the organisation does not represent.

(5) If the stipulations of the organisation referred to in subsection 3 do not provide the right to individual remuneration for the authors represented by the organisation, an author not represented by the organisation shall, however, have the right to claim an individual remuneration. The remuneration shall be paid by the organisation referred to in subsection 1. The right to individual remuneration shall expire, if a claim concerning it has not verifiably been presented within three years from the end of the calendar year during which the reproduction, communication or transmission of the work took place.

### **CHAPTER 2a**

#### **Compensation for the reproduction of a work for private use (14.10.2005/821)**

#### **Section 26a (14.10.2005/821)**

(1) Whenever an audio or video tape, or any other device on which sound or image can be recorded and which to a substantial extent is used for the reproduction of a work for private use, is produced or imported into the country for distribution to the public, the manufacturer or the importer shall pay a levy, determined on the basis of the playing time or the recording capacity of the device, to be used as direct compensation to the authors of said works and as indirect compensation to the authors for their common purposes. The compensations shall be paid out to the authors through an organisation representing numerous authors of works in a certain field used in Finland in accordance with a plan for the use of the funds annually approved by the Ministry of Education.

(2) Whoever offers for resale a device sold by a manufacturer or importer referred to in subsection 1 shall, upon the request of the organisation referred to in section 26b, prove that the levy on the device has been paid. If the levy has not been paid, the reseller shall pay the levy. The reseller shall, however, be entitled to request the levy he has paid from the manufacturer or the importer primarily responsible for the levy, or from another reseller from whom the device has been obtained for resale and who is secondarily responsible for the levy.

(3) Provisions shall be issued by a Government Decree, after the Ministry of Transport and Communications and the Ministry of Trade and Industry have given their opinions on the matter, to determine the devices subject to the levy referred to in subsection 1 and the amount of the levy. Before the issuing of the Government Decree, the Ministry of Education shall negotiate with the organisations representing the manufacturers and importers, as well as with the organisations representing the authors referred to in subsection 1, and the consumer authorities. The amount of the levy shall be settled at a level which can be considered a fair compensation for the reproduction of a work for private use. A maximum shall be determined for a levy per device, which may not be exceeded. The determination of the levy shall be informed by existing survey data on the prevalence of reproduction for private use and by the extent to which technological measures preventing reproduction for private use have been used to protect works made available to the public. Account shall also be taken of the extent to which each type of device can be used for reproduction of works protected by technological measures and of unprotected works. (31.10.2008/663)

**Section 26b (14.10.2005/821)**

- (1) The levy shall be paid to the organisation, representing numerous authors of works used in Finland, which has been approved for this task by the Ministry of Education for a fixed period, for a maximum of five years. Only one organisation at a time may be approved for the task. The organisation must have the financial and operational prerequisites and capacity to manage the affairs in accordance with the approval decision. The organisation shall annually submit an account of the measures it has taken pursuant to the approval decision. The decision of the Ministry of Education shall be complied with, notwithstanding an appeal pending until the matter has been resolved by means of a valid decision. The approval shall be subject to the commitment of the organisation to using a part of the proceeds, to be annually agreed by the Ministry of Education and the organisation, as indirect compensation to the authors for their common purposes in accordance with a plan for the use of the funds annually approved by the Ministry of Education.
- (2) The administrative costs shall be deducted from the levy proceeds.

**Section 26c (14.10.2005/821)**

- (1) The Ministry of Education may issue more detailed orders regarding the management of the levies to the organisation. The Ministry shall supervise that the levy is administered in accordance with the orders and that the plan for the use of the funds is adhered to. The Ministry of Education shall have the right to obtain from the organisation any information necessary for the purposes of the supervision.
- (2) The Ministry of Education may withdraw its approval of an organisation if the organisation does not comply with the orders issued to it, or with the plan for the use of the funds, or does not provide the information required for the supervision, and if the organisation commits serious or substantial offences or dereliction of duty in breach of the approval decision and its terms, and if notices to comply or warnings issued to the organisation have not led to the rectification of the shortcomings in its operation.

**Section 26d**

- (1) The organisation shall have the right, notwithstanding the secrecy provisions of the Customs Act [(573/78)], to obtain from a customs authority any information about individual import consignments, necessary for the purposes of collection. (8.6.1984/442)
- (2) The manufacturer or importer of a device and, when so separately requested by the organisation, the reseller referred to in section 26a(2) shall provide the organisation with any information necessary for the purposes of collection about the devices manufactured, imported or offered for sale by him. (16.12.1994/1254)
- (3) Whoever has received information under subsections 1, 2, 5 or 6 regarding the business activities of another may not use it illegally or reveal it to others. (16.12.1994/1254)
- (4) A customs authority may deliver a device to the importer only if the importer demonstrates that he has paid the levy to the organisation or has pledged to the organisation a security accepted by it for the payment of the levy. The organisation may consent, for a fixed period or until further notice, to the delivering of a device before the payment of the levy or the pledging of a security, if there is a well founded reason to assume that the importer will duly make the payment. The organisation may cancel the consent if the importer neglects to make the payment or provide the information referred to in subsection 2. (11.1.1991/34)
- (5) A state provincial office may, upon application by the organisation, oblige the manufacturer, importer, or reseller referred to in section 26a(2) to fulfil the obligation referred to in subsection 2, on pain of fine. The imposition of a conditional fine and the ordering of its payment shall otherwise be governed by the provisions of the Act on the Conditional Imposition of a Fine (1113/90). (16.12.1994/1254)
- (6) The state provincial office shall have the right to conduct an inspection for the purpose of supervising compliance with the payment obligation referred to in section 26a(1). The

manufacturer, importer or reseller of a device, referred to in section 26a(2) shall admit the person conducting the inspection to any business and storage premises, land areas and vehicles in his possession and, when requested, present his bookkeeping, business correspondence, data processing records and any other documents which may have relevance to supervision. The person conducting the inspection shall have the right to make copies of the documents to be inspected. The person conducting the inspection shall have the right to use a person appointed by the collecting organisation as an expert. The state provincial office shall have the right to provide the organisation with any information necessary for the purposes of collection. (16.12.1994/1254)

(7) The police shall have the duty, where necessary, to provide official assistance to the state provincial office in the execution of duties assigned to the state provincial office under subsection 6. (16.12.1994/1254)

**Section 26e (14.10.2005/821)**

- (1) The user or exporter of a device shall be entitled to obtain from the organisation a refund corresponding to the levy paid, for devices:
1. which are exported;
  2. which are used for professional reproduction or for the reproduction of material protected under this Act for educational or scientific research purposes;
  3. which are used for the production of audio or video recordings intended for persons with disability;
  4. which are used as data processing memory or storage devices in professional activity.
- (2) Unless such repayment has verifiably been requested within three months from the end of the year during which the right to the refund came about, this right shall expire.
- (3) The collecting organisation may authorise the user entitled to a refund under subsection 1(2–4) to purchase from a manufacturer, an importer or a reseller referred to in section 26a, or to import for his own use, as provided in said subsection, a device referred to in section 26a(1) without paying the levy.

**Section 26f (8.6.1984/442)**

Whenever it can be demonstrated that the user or the exporter would, under section 26e(1), be entitled to be refunded for all the devices included in a given batch manufactured or imported, or for a considerable proportion thereof, the levy may be left uncollected in respect to it.

**Section 26g (repealed by 14.10.2005/821)****Section 26h (14.10.2005/821)**

More detailed provisions regarding the implementation of sections 26a–26f shall be issued by Government Decree.

**CHAPTER 2 b****Resale remuneration (24.3.1995/446)****Section 26i (5.5.2006/345)**

- (1) The author of a work of fine art has the right to receive a remuneration for all acts of resale involving an art market professional as a seller, a buyer, or an intermediary. However, the right does not extend to acts of resale by a private person to a museum open to the public.
- (2) The remuneration for the resale of a work of fine art shall be:
- a) 5 per cent for the portion of the sale price up to EUR 50 000;
  - b) 3 per cent for the portion of the sale price exceeding EUR 50 000 but not exceeding EUR 200 000;

- c) 1 per cent for the portion of the sale price exceeding EUR 200 000 but not exceeding EUR 350 000;
  - d) 0,5 per cent for the portion of the sale price exceeding EUR 350 000 but not exceeding EUR 500 000; and
  - e) 0,25 per cent for the portion of the sale price exceeding EUR 500 000.
- (3) The resale remuneration shall be calculated from the net sale price of the work of fine art, not including value added tax. Resale remuneration shall not be collected for a sale price up to EUR 255, not including value added tax. The total amount of remuneration calculated in accordance with subsection 2 may not exceed EUR 12 500.
- (4) The right to receive a remuneration for the sale of a work of fine art shall come into effect when the author or his successor in title has sold or otherwise permanently transferred a work of fine art or copies of a work made in limited numbers by the artist himself or under his authority.
- (5) The resale right does not extend to the resale of products of architecture.
- (6) The resale right shall subsist for the term of copyright protection. The right is personal and it cannot be transferred to a third party or waived. However, what is provided in section 4(1) shall be applied to the right. If there are no successors in title surviving the author, the remunerations shall be used for the common purposes of authors.

**Section 26j (5.5.2006/345)**

- (1) The resale remuneration shall be collected and distributed by an organisation representing the authors of the works sold, approved for this function by the Ministry of Education for a fixed period, for a maximum of five years. Only one organisation at a time can be approved for the function. The approved organisation must have the financial and operational prerequisites and capacity to manage the affairs in accordance with the approval decision. The organisation must give an annual report to the Ministry of Education on the measures taken pursuant to the decision of approval.
- (2) The decision of the Ministry of Education shall be complied with, notwithstanding an appeal pending until the matter has been resolved by means of a valid decision. The approval may be reversed if the organisation commits serious or substantial offences or dereliction of duty in breach of the approval decision and its terms and if notices to comply or warnings issued to the organisation have not led to the rectification of the shortcomings in its operation.
- (3) The Ministry of Education may issue to the organisation more detailed orders regarding the collection of the remuneration and the distribution to the authors. The Ministry of Education shall have the right to obtain from the organisation any information necessary for the purposes of supervision.

**Section 26k (5.5.2006/345)**

- (1) The payment of the remuneration is the responsibility of the seller and the intermediary referred to in Section 26i(1). The buyer is responsible for the payment of the remuneration if the act of resale involves no other art market professionals besides the buyer.
- (2) The seller, the intermediary, and the buyer are obliged to submit to the organisation referred to in section 26j an annual account of the sales of works. The seller, the intermediary, and the buyer are obliged, at the request of the organisation, to submit to the organisation any information necessary for the verification of the correctness of the payments for the year of the payments and for the preceding three calendar years.

**Section 26l (24.3.1995/446)**

- (1) A state provincial office may, upon application by the organisation, oblige the seller to fulfil the obligation referred to in section 26k(2) on pain of fine. The imposition of a conditional fine and the ordering of its payment shall otherwise be governed by the provisions of the Act on the Conditional Imposition of a Fine (1113/90).
- (2) The state provincial office shall have the right to conduct an inspection for the purpose of supervising compliance with the obligation to provide information and submit an

account referred to in section 26k(2). For the purpose of the inspection, the seller shall admit the person conducting the inspection to any business premises in the possession of the seller and, when so requested, present his bookkeeping, his business correspondence and any documents concerning the sales subject to the payment of remuneration, as well as any other documents which may have relevance to the supervision. The person conducting the inspection shall have the right to make copies of the documents inspected. The person conducting the inspection shall have the right to use a person appointed by the collecting organisation as an expert. The state provincial office shall have the right to provide the organisation with any information necessary for the purposes of collection.

(3) The police shall have the duty, where necessary, to provide official assistance to the state provincial office in the execution of duties assigned to the state provincial office under subsection 2.

(4) Whoever has received information under section 26k(2) or the present section regarding the business activities of another may not use it illegally or reveal it to others.

**CHAPTER 3  
Transfer of copyright**

**General provisions governing transfer of copyright**

**Section 27**

- (1) Copyright may be transferred entirely or partially, subject to the limitations of section 3.
- (2) The transfer of a copy shall not include the transfer of copyright. In the case of a commissioned portrait, the author may not, however, exercise his right without the consent of the person who commissioned it or, after his death, the surviving spouse and heirs.
- (3) Provisions concerning the transfer of copyright in certain cases are issued in sections 30-40 and 40b. The said provisions shall, however, apply only where not otherwise agreed (7.5.1993/418)

**Section 28**

Unless otherwise agreed, the person to whom a copyright has been transferred may not alter the work or transfer the copyright to others. When copyright is held by a business, it may be transferred in conjunction with the business or a part thereof; however, the transferor shall remain liable for the fulfilment of the agreement.

**Section 29 (17.12.1982/960)**

The adjustment of an unreasonable condition in an agreement on a transfer of copyright shall be governed by the provisions of the Contracts Act (228/29).

**Right to remuneration for rental of a copy of a film or a sound recording (31.10.1997/967)**

**Section 29a (31.10.1997/967)**

An author who has transferred to the producer of a film or a sound recording the right to distribute a sound recording or a film by rental shall be entitled to receive an equitable remuneration for the rental from the producer. The author may not waive his right to remuneration.

**Contract on public performance**

**Section 30**

- (1) Where the right to perform a work publicly has been transferred, the transfer shall be valid for a period of three years and shall not provide exclusive right. If a duration longer

than three years and an exclusive right have been agreed upon, the author may nevertheless perform the work himself or transfer the performance right to others if the right has not been exercised during the period of three years.

(2) The provisions of subsection 1 shall not apply to cinematographic works.

#### *Publishing contract*

##### **Section 31**

(1) By a publishing contract the author transfers to the publisher the right to reproduce a literary or artistic work by printing or a similar process and the right to publish it.

(2) The manuscript or other copy from which the work is to be reproduced shall remain the property of the author.

##### **Section 32**

(1) The publisher shall have the right to publish an edition, which may not exceed 2000 copies in the case of a literary work, 1000 copies in the case of a musical work, and 200 copies in the case of a work of art.

(2) An edition means the number of copies which the publisher produces at one time.

##### **Section 33**

The publisher shall publish the work within a reasonable time, take care of its distribution in the usual manner, and follow up the publishing to the extent determined by marketing conditions and other circumstances. In case of default, the author may rescind the contract and keep the remuneration received; the author shall also be entitled to compensation for any damage not covered by the remuneration.

##### **Section 34**

If a work has not been published within two years or, if it is a musical work, within four years from the date on which the author submitted a complete manuscript or other copy for reproduction, the author may rescind the contract and keep the remuneration received, even if there is no dereliction on the part of the publisher. The same shall apply when the copies of the work are sold out and the publisher, although he has the right to publish a new edition, fails to use the said right within one year from the date on which the author requested a reprint.

##### **Section 35**

(1) The publisher shall provide the author with a certification from the printer, or whoever else reproduces the work, concerning the number of copies produced.

(2) If, during a fiscal year, sale or rental has taken place for which the author is entitled to be remunerated, the publisher shall render account to him within nine months from the end of the year concerning the sales or rentals during the year and the number of copies in stock at the end of the year. The author shall moreover have the right to obtain information, at his own request, about the number of copies in stock at the end of a year even after the end of the accounting term.

##### **Section 36**

If the production of a new edition is commenced later than one year after the publication of the previous edition, the author shall be given an opportunity before the production to make such alterations in the work as can be made without unreasonable cost and without changing the character of the work.

##### **Section 37**

(1) The author may not publish the work again in the form and manner determined in the contract, until the edition or editions which the publisher has the right to publish have been

sold out.

(2) A literary work may nevertheless be incorporated by the author in an edition of his collected or selected works after fifteen years from the year during which the publishing of the work commenced.

##### **Section 38**

The provisions concerning publishing contracts shall not apply to contributions to newspapers and periodicals. Sections 33 and 34 shall not apply to contributions to other literary or artistic work of compilation.

#### *Film contracts*

##### **Section 39**

(1) A transfer of the right to make a film on the basis of a literary or artistic work shall comprise the right to make the work available to the public by showing the film in cinemas, on television or by any other means, and the right to provide the film with subtitles and to dub the film in another language. (31.7.1974/648)

(2) The provisions of subsection 1 shall not, however, apply to musical works.

##### **Section 40**

(1) When the right to use a literary or musical work for a film intended for public showing is transferred, the transferee shall produce the film and make it available to the public within a reasonable time. If this is neglected, the author may rescind the contract and keep any remuneration received; the author shall also be entitled to compensation for any damage not covered by the remuneration.

(2) If the film has not been produced within five years from the time at which the author fulfilled his obligations, the author may rescind the contract and keep any remuneration received, even if there is no dereliction on the part of the transferee.

#### *Computer programs and databases* (3.4.1998/250)

##### **Section 40a** (Repealed by Act 418/1993)

##### **Section 40b** (11.1.1991/34)

(1) If a computer program and a work directly associated with it has been created in the scope of duties in an employment relation, the copyright in the computer program and the work shall pass to the employer. The same shall correspondingly apply to a computer program and a work directly associated therewith, created within the scope of a civil service post.

(2) The provisions of subsection 1 above shall not apply to a computer program, or to a work directly associated therewith, created by an author independently engaged in teaching or research in an institution of higher education, with the exception of institutions of military education. (7.5.1993/418)

(3) The provisions of subsections 1 and 2 above shall correspondingly apply to a database which is created in the scope of duties in private and public employment relation. (3.4.1998/250)

#### *A portrait made by photographic means* (24.3.1995/446)

##### **Section 40c** (24.3.1995/446)

A person commissioning a photographic portrait shall, even if the photographer has retained the right in the work, have the right to authorise the inclusion of the portrait in a newspaper, a periodical or a biographical writing, unless the photographer has separately retained for himself the right to prohibit this.

*Transfer of copyright upon the author's death and the foreclosure of copyright*

**Section 41**

- (1) After the author's death, copyright shall be governed by provisions pertaining to marital right to property, inheritance and will.
- (2) The author may give directions in his will for the exercise of copyright, with binding effect also on the surviving spouse and direct descendants, adopted children and their descendants, or authorise someone else to give such directions.

**Section 42**

Copyright shall not be subject to foreclosure as long as the copyright remains with the author or with a person to whom the copyright has been transferred by virtue of marital right to property, inheritance or will. The same shall apply to manuscripts and works of art which have not been exhibited, offered for sale, or otherwise authorised for being made public.

**CHAPTER 4**

**Term of Copyright**

**Section 43** (22.12.1995/1654)

Copyright shall subsist until seventy years have elapsed from the year of the author's death or, in the case of a work referred to in section 6, from the year of death of the last surviving author. Copyright in a cinematographic work shall subsist until seventy years have elapsed from the year of the death of the last of the following to survive: the principal director, the author of the screenplay, the author of the dialogue and the composer of music specifically created for use in the cinematographic work.

**Section 44** (22.12.1995/1654)

- (1) The copyright in a work made public without mention of the author's name or generally known pseudonym or pen name shall subsist until the end of the seventieth year after the year in which it was made public. If the work is published in parts, the duration of copyright shall be calculated separately for each part.
- (2) If the identity of the author is disclosed during the period referred to in subsection 1, the provisions of section 43 shall apply.
- (3) The copyright in a work not made public, whose author is unknown, shall subsist until seventy years have elapsed from the year in which the work was created.

**Section 44a** (22.12.1995/1654)

Anyone who for the first time publishes or makes public a previously unpublished work or a work not made public, which has been protected under Finnish law and the protection of which has expired, shall obtain a right in the work as provided in section 2 of this Act. The right shall subsist until twenty-five years have elapsed from the year in which the work was published or made public.

**CHAPTER 5**

**Rights related to copyright** (14.10.2005/821)

*Performing artist* (14.10.2005/821)

**Section 45** (14.10.2005/821)

- (1) Without the performing artist's consent, a performance of a literary or artistic work or

folklore shall not:

1. be recorded on a device by means of which the performance can be reproduced;
  2. be made available to the public on radio or television or by direct communication.
- (2) A performance referred to in subsection 1 which has been recorded on a device referred to in section 46 shall not, without the performing artist's consent, until 50 years have elapsed from the year in which the performance took place:
1. be transferred on to a device by means of which it can be reproduced;
  2. be performed publicly to an audience present at the performance;
  3. be communicated to the public by wire or by wireless means, including communication of the recorded performance to the public in a manner which enables members of the public to access the work from a place and at a time individually chosen by them;
  4. be distributed to the public.
- (3) A performance referred to in subsection 1 which has been recorded on a device referred to in section 46a shall not, without the performing artist's consent, until 50 years have elapsed from the year in which the performance took place:
1. be transferred to a device by means of which it can be reproduced;
  2. be communicated to the public in a manner which enables members of the public to access the work from a place and at a time individually chosen by them;
  3. be distributed to the public.
- (4) If the recording of the performance is published or made public before 50 years have elapsed from the year of performance, the protection conferred by subsections 2 and 3 shall subsist until 50 years have elapsed from the year during which the recorded performance was published or made public for the first time.
- (5) The procedure which under subsections 1–4 requires the performing artist's consent shall be correspondingly governed by the provisions of section 2(2–4), sections 3, 6–9, 11 and 11a, section 12(1–3), section 13a(2), section 14(1, 3 and 4), sections 15, 16 and 16a–16c, section 17(2, 3 and 5), section 19(1, 2 and 5), sections 21, 22 and 25b–25d, section 25f(2 and 3), sections 25h, 25i, 26, 26a–26f and 26h, section 27(1–2), and sections 28, 29, 29a, 41 and 42.

*Producer of a sound recording* (14.10.2005/821)

**Section 46** (14.10.2005/821)

- (1) A phonograph record or any other device on which sound has been recorded shall not, without the consent of the producer, until 50 years have elapsed from the year during which the recording took place:
  1. be transferred on to a device by means of which it can be reproduced;
  2. be performed publicly to an audience present at the performance;
  3. be communicated to the public by wire or by wireless means, including communication of the recorded material to the public in a manner which enables members of the public to access the work from a place and at a time individually chosen by them;
  4. be distributed to the public.
- (2) If the recording is published before 50 years have elapsed from the year of recording, the protection conferred by subsection 1 shall subsist until 50 years have elapsed from the year during which the recording was published for the first time. If the recording is not published but is legally made available to the public by means other than the distribution of copies of the recording before 50 years have elapsed from the year of recording, the protection shall subsist until 50 years have elapsed from the year during which the recording was made available to the public in said manner for the first time.
- (3) The procedure which under subsections 1–2 requires the producer's consent shall be correspondingly governed by the provisions of section 2(2–4), sections 6–9, sections 11(2–5), section 11a, section 12(1–3), section 13a(2), section 14(1, 3 and 4), sections 15, 16 and 16a–16c, section 19(1, 2 and 5), sections 21, 22, 25b and 25d, section 25f(2 and 5),

sections 26, 26a–26f and 26h, section 27(1–2), and section 29.  
 (4) The provisions of this section shall not apply to a device referred to in section 46a.

#### ***Producer of a video recording*** (14.10.2005/821)

##### **Section 46a** (14.10.2005/821)

(1) A film or any other device on which moving images have been recorded shall not, without the producer's consent, until 50 years have elapsed from the year during which the recording took place:

1. be transferred on to a device by means of which it can be reproduced;
2. be distributed to the public;
3. be communicated to the public by wire or by wireless means in a manner which enables members of the public to access the work from a place and at a time individually chosen by them.

(2) If the recording is published or made public before 50 years have elapsed from the year of recording, the protection conferred by subsection 1 shall subsist until 50 years have elapsed from the year during which the recording was published or made public for the first time.

(3) The procedure which under subsections 1–2 requires the producer's consent shall be correspondingly governed by the provisions of section 2(2–3), sections 6–9, section 11(2–5), section 11a, section 12(1–3), section 13a(2), section 14(1, 3 and 4), sections 15, 16 and 16a–16e, section 19(1, 2 and 5), sections 22, 25b and 25d, section 25(2–3), sections 26, 26a–26f and 26h, section 27(1–2), and section 29.

#### ***Use of an audio recording and a music recording containing images*** (14.10.2005/821)

##### **Section 47** (14.10.2005/821)

(1) Notwithstanding the provisions of section 45(2 and 4) and section 46(1–2), a performance referred to in section 45, which has been recorded on a device referred to in section 46, and a device referred to in said section, which has been published for commercial purposes and the copies of which have been distributed or which has been communicated to the public, may be used:

1. directly or indirectly in a public performance;
2. in original communication to the public in a manner other than one enabling members of the public to access the recorded performance or material at a place and time chosen by them;
3. for simultaneous and unaltered retransmission of a radio or television broadcast for reception by the public.

(2) A remuneration shall be paid to the producer and the performing artist whose performance is recorded on a device used in a performance, communication or retransmission referred to in subsection 1. No remuneration shall, however, be paid for retransmission referred to in subsection 25i.

(3) If a music recording containing images, which has been published for commercial purposes and copies of which have been distributed or which has been communicated to the public is used in a manner referred to in paragraph 1 or 2 of subsection 1 during the period determined in section 46a(2), the performing artist whose performance of a composition is recorded on the device shall have a right to remuneration for the use of the recorded performance.

(4) Cases referred to in subsections 1–3 above shall be correspondingly governed by the provisions of sections 21, 22, and 25b, section 27(1–2) and section 29 and additionally, in regard of a performing artist, by the provisions of section 11(2) and sections 28, 41 and 42.

(5) The provisions of subsections 1 and 2 shall not apply to a device referred to in section 46a.

#### ***Remuneration for use*** (14.10.2005/821)

##### **Section 47a** (14.10.2005/821)

(1) The remuneration for the use of a photograph record under paragraphs 1–2 of section 47(1) shall be paid through an organisation which has been approved by the Ministry of Education and which represents numerous performing artists and sound recording producers whose performances recorded on a device and whose recordings are used in Finland.

(2) The remuneration for retransmission under section 47(1)(3) shall be paid through the organisation referred to in section 26(1).

(3) The remuneration for the use of a music recording containing images under section 47(3) shall be paid through an organisation which has been approved by the Ministry of Education and which represents numerous performing artists whose performances recorded on a device are used in Finland.

(4) The right to remuneration of a performing artist or a producer shall expire if a claim concerning it has not verifiably been presented to the organisation within three years from the end of the calendar year during which the performance recorded on a device and the device were used.

(5) The Ministry of Education shall approve the organisation referred to in subsections 1 and 3 on application for a fixed period, for a maximum of five years. Only one organisation representing the rightholders at a time may be approved for each task. The organisation to be approved shall be financially sound and be capable of managing matters in accordance with the approval decision. The organisation shall annually submit an account to the Ministry of Education of the measures it has taken pursuant to the approval decision. The decision of the Ministry of Education shall be complied with, notwithstanding an appeal pending until the matter has been resolved by means of a valid decision. The approval may be reversed if the organisation commits serious or substantial offences or dereliction of duty in breach of the approval decision and its terms and if notices to comply or warnings issued to the organisation have not led to the rectification of the shortcomings in its operation.

(6) If the use of the device does not pay the remuneration referred to in subsections 1 or 3, the amount of which he has agreed upon with the performing artists and, in cases referred to in section 47(1), also with the producers, or the amount of which has been determined in a procedure referred to in section 54, a court of justice may rule, when a claim is made by a party concerned, that the use may continue only with the consent of the performing artists or the producers until the remuneration has been paid.

#### ***Radio and television organisation*** (14.10.2005/821)

##### **Section 48** (14.10.2005/821)

(1) A radio or television transmission shall not, without the consent of the transmitting organisation, be retransmitted or recorded on a device by means of which it can be reproduced or communicated to the public. Nor shall a television broadcast, without the consent of the transmitting organisation, be made audible or visible to the public on premises to which the public has admission in return for payment.

(2) A recorded transmission shall not, without the consent of the transmitting organisation, until 50 years have elapsed from the year of transmission:

1. be transferred on to a device by means of which it can be reproduced or communicated to the public;
2. be transmitted anew;
3. be distributed to the public;
4. be communicated to the public by wire or wireless means in a manner which enables members of the public to access the work from a place and at a time individually chosen by them.

(3) The provisions of subsections 1 and 2 shall correspondingly apply to any other

programme-conveying signal besides radio or television transmissions.

- (4) Cases referred to in subsections 1–2 above shall be correspondingly governed by the provisions of section 2(2–3), sections 6–8, section 11(2–5), section 11a, section 12(1–2), section 13a(2), section 14(1, 3, and 4), sections 15, 16 and 16a–16c, section 19(1), sections 21, 22, 23b and 25d, section 25(2–3), section 26, section 27(1–2) and section 29. In addition the retransmission of a broadcast by cable shall be correspondingly governed by the provisions of section 25h(1) and section 25i, unless the broadcast originates in another country in the European Economic Area, in which case the provisions to be applied are section 25h(3), instead of the above.

#### ***Producer of a catalogue and a database*** (14.10.2005/821)

##### **Section 49**

- (1) A person who has made
1. a catalogue, a table, a program or any other product in which a large number of information items are compiled, or
  2. a database the obtaining, verification or presentation of which has required substantial investment,
- shall have the exclusive right to control the whole or, in qualitative or quantitative terms, a substantial part thereof, by making copies of it and by making it available to the public. (14.10.2005/821)
- (2) The right conferred by subsection 1 above shall subsist until 15 years have elapsed from the year in which the product was completed or, if the product was made available to the public before the end of that time, until 15 years have elapsed from the year in which the product was made available to the public for the first time. (3.4.1998/250)
- (3) A product referred to in subsection 1 above shall be correspondingly governed by the provisions of section 2(2–4), sections 7–9, section 11(2–5), section 12(1, 2 and 4), sections 13 and 13a, section 14(1, 3 and 4), sections 15, 16, 16a–16c, 17 and 18, section 19(1, 2 and 5), sections 22, 23b–25d and 25f–25i, section 25j(4–5), sections 26 and 27–29. If the product or a part thereof is subject to copyright, that right may be invoked. (14.10.2005/821)
- (4) Any contractual provision under which the maker of the product that has been made public, referred to above in subsection 1, prevents the lawful user from using insubstantial parts of its contents, evaluated qualitatively or quantitatively, for any purpose whatsoever, or restricts such a use, shall be without effect. (3.4.1998/250)

#### ***Photographer*** (14.10.2005/821)

##### **Section 49a**

- (1) A photographer shall have the exclusive right to control a photographic picture, be it in an original form or in an altered form:
1. by making copies thereof;
  2. by making it available to the public. (14.10.2005/821)
- (2) The right to a photographic picture shall be in force until 50 years have elapsed from the end of the year during which the photographic picture was made. (24.3.1995/446)
- (3) Photographs referred to in this section shall be correspondingly governed by the provisions of section 2(2–4), section 3(1–2), sections 7–9, 11 and 11a, section 12(1–2), sections 13 and 13a, section 14(1, 3 and 4), sections 15, 16 and 16a–16c, section 17(1), section 18, section 19(1, 2 and 5), sections 20, 22 and 25, section 25a(1–2), and sections 25b, 25d, 25f–25i, 26, 26a–26f, 26h, 27–29, 39, 40, 40c, 41 and 42. If a photographic picture is subject to copyright, copyright may be invoked. (14.10.2005/821)

#### ***Press reports*** (14.10.2005/821)

##### **Section 50**

A press report which is supplied by a foreign press agency or by a correspondent abroad by virtue of a contract, may not be made available to the public by the medium of a newspaper or radio without the consent of its recipient, until twelve hours have elapsed from its making public in Finland.

#### **Chapter 5a** (14.10.2005/821)

#### **Technological measures and electronic rights management information**

##### ***Prohibition to circumvent a technological measure***

##### **Section 50a** (14.10.2005/821)

- (1) An effective technological measure protecting a work protected under this Act, which has been installed as protection for the work by the author or some other person with the author's permission in making the work available to the public, shall not be circumvented.
- (2) An *effective technological measure* means technology, a device or a component which, in the normal course of its operation, is designed to prevent or restrict acts in respect of the work without the author's or other rightholder's authorisation and by means of which the protection objective is achieved.
- (3) The provisions of subsection 1 shall not apply if the technological measure is circumvented in course of research or education relating to encryption or if a person who has lawfully obtained the work circumvents the technological measure in order to be able to listen to or view the work. A work in which the technological measure has been circumvented for the purposes of listening or viewing shall not be reproduced.
- (4) The provisions of subsections 1–3 shall not apply to a technological measure protecting a computer program.

##### ***Prohibition to produce and distribute devices for circumventing technological measures***

##### **Section 50b** (14.10.2005/821)

- (1) Devices, products or components enabling or facilitating the circumvention of an effective technological measure shall not be manufactured or imported for distribution to the public; brought onto the territory of Finland for the purpose of exportation to a third country; distributed to the public; sold; rented; advertised for sale or rental; or held in possession for commercial purposes. Nor shall services enabling or facilitating the circumvention of an effective technological measure be offered.
- (2) Devices, products or components or services referred to in subsection 1 are those
1. which are promoted, advertised or marketed for the purpose of circumventing effective technological measures;
  2. whose purpose or use other than circumvention has only limited commercial significance; or
  3. which are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of effective technological measures protecting works protected under this Act.
- (3) The provisions of subsection 1 shall not apply to a technological measure protecting a computer program.

##### ***Use of works protected by technological measures***

##### **Section 50c** (14.10.2005/821)

- (1) Anyone who is lawfully in possession of or has legal access to a work protected by an effective technological measure and who, pursuant to section 14(3), sections 15, 16,



16a–16c or 17, section 25d(2) or section 25f(2) is entitled to use the work must be able to use the work to the extent necessary to avail himself of the limitations of copyright laid down in said provisions.

(2) The author shall offer the user referred to in subsection 1 the means to use the work in accordance with the provisions referred to in the subsection, if the user lacks the means to use the work owing to the technological measures. If the author does not offer the means referred to above or if the use of the work is not made possible by voluntary measures, such as agreements between the authors and users of the works or other arrangements, the matter shall be resolved by an arbitration procedure referred to in section 54.

(3) The provisions of subsections 1 and 2 above shall not apply to a work communicated to the public on agreed terms so that members of the public may access the work from a place and at a time individually chosen by them.

(4) The provisions of subsections 1 and 2 concerning the author shall also apply to a person who with the author's consent makes the work available to the public.

(5) The provisions of subsections 1 and 2 shall not apply to a computer program.

#### ***Electronic rights management information***

##### **Section 50d (14.10.2005/821)**

(1) Electronic rights management information contained in a copy of a work protected under this Act or indicated in the communication of the work to the public, which identify the work, the author or some other rightholder or which provide information about the terms governing the use of the work, shall not be removed or altered.

(2) A copy of a work protected under this Act shall not be distributed to the public or imported for distribution to the public or the work shall not be communicated to the public in a form in which the electronic management information has been removed from the work or have been altered without authorisation.

(3) The rights management information referred to in this section are information which the author or a person on his behalf or with his authorisation has installed in the work.

#### ***Application to the rights related to copyright referred to in Chapter 5***

##### **Section 50e (14.10.2005/821)**

The provisions of sections 50a–50d concerning the work and the author shall correspondingly apply to the protected subject matter referred to in the provisions of Chapter 5 and to the holders of rights therein.

### **CHAPTER 6 Special provisions**

#### **Section 51**

A literary or artistic work may not be made available to the public under such a title, pseudonym or pen name that the work or its author may easily be confused with a work previously made public or its author.

#### **Section 52**

(1) The name or signature of the author may be inscribed on a copy of a work of art by another person only when so instructed by the author.

(2) The name or signature of the author shall not be inscribed on a copy of a work of art in such a manner that the copy could be confused with the original work.

(3) Whoever makes or distributes to the public a copy of a work of art shall mark the copy in such a manner that the copy cannot be confused with the original work. (24.3.1995/446)

##### **Section 52a (24.3.1995/446)**

(1) The author of a work of fine art shall have the right of access to see the work he has transferred, unless this causes unreasonable detriment to the owner or holder of the work, and provided this is necessary:

1. for the author's artistic activity; or

2. for the purpose of exercising his economic rights, as defined in section 2.

(2) The right referred to in paragraph 2 of subsection 1 above shall be governed by the provisions of section 41.

##### **Section 53**

(1) If, after the death of the author, a literary or artistic work is publicly treated in a manner which violates cultural interests, the authority to be designated by Decree shall have the right to prohibit such an action, notwithstanding that the copyright therein is no longer in force, or that copyright has never existed.

(2) If the person whom the prohibition concerns is dissatisfied with the prohibition, he may submit the matter to a court of justice for decision.

##### **Arbitration (14.10.2005/821)**

##### **Section 54 (14.10.2005/821)**

(1) In the event of a dispute, the matter shall be settled by an arbitration procedure whenever the question concerns:

1. remuneration referred to in section 17(4), section 18(2), section 19(4) or section 47(2 or 3);

2. the granting of an authorisation referred to in section 26 and the terms thereof as provided in section 13, if the matter relates to the making of copies for use in educational activities;

3. the granting of an authorisation referred to in section 26 and the terms thereof, as provided in section 14(1), if the matter relates to the making of copies for use in educational activities;

4. the granting of an authorisation referred to in section 26, and the terms thereof, for simultaneous and unaltered retransmission of a radio or television broadcast in accordance with section 25h(1);

5. the granting of an authorisation referred to in section 26, and the terms thereof, for simultaneous and unaltered retransmission of a radio or television broadcast by cable in accordance with section 25h(2) or section 48(1), if the broadcast originates in a country belonging to the European Economic Area; the authorisation may be granted if the transmitting organisation, without a well-founded reason, prohibits cable retransmission or sets unreasonable terms thereupon;

6. the settling of a matter between the author and the user in a case referred to in section 50c(2).

(2) Each party shall appoint an arbitrator for the arbitration, and those thus appointed invite a third arbitrator as a chairperson. If one of the parties has proposed the use of arbitration to the adversary and appointed an arbitrator but the adversary has not appointed an arbitrator within one month of the notification thereof, he shall be considered to have refused the settling of the matter by arbitration.

(3) The parties concerned may also agree to submit the matter to arbitrators to be settled in accordance with the Arbitration Act (967/1992).

(4) Any authorisation granted pursuant to the this section shall have the same effect as the granting of authorisation referred to in section 26 in accordance with section 13, section 14(1), section 25h(1 or 2) or section 48(1).

(5) If a party concerned refuses the arbitration of a matter referred to in subsection 1, the matter may, upon application by a party concerned, be submitted to a court of justice for settling. The competent court of justice shall be the District Court of Helsinki. If the Court has granted authorisation in a matter referred to in paragraphs 2–4 of said subsection and

the decision is appealed, the authorisation and its terms shall be in force until the matter has been settled with finality or until a higher court rules otherwise in regard of the appeal.

#### **Education for the purpose of gain** (14.10.2005/821)

##### **Section 54a** (19.12.1980/897)

The provisions of this Act regarding educational activities shall not apply to educational activities conducted for purpose of gain.

#### **Remuneration for the use of a sound recording and a music recording containing images** (14.10.2005/821)

##### **Section 54b** (24.3.1995/446)

(1) If there is a risk that remuneration referred to in section 47 cannot be paid to the person entitled to it, a court of justice may, upon the request of said person, prohibit the user of devices referred to in section 46 from using said devices until he posts an acceptable security for the payment of remunerations or until a court of justice orders otherwise upon the request of a party concerned. The matter shall be governed, where appropriate, by the provisions of sections 4, 5, 7, 8, 11 and 14 of Chapter 7 of the Code of Judicial Procedure.

(2) If the remuneration referred to in section 47(2) has not been agreed upon before the use referred to in subsection 1 of said section, the remuneration shall fall due after 30 days from the day on which the device referred to in section 46 was used in accordance with the provisions of section 47(1). (14.10.2005/821)

(3) The provisions of subsections 1 and 2 shall correspondingly apply to remuneration referred to in section 47(3) and a music recording containing images. (14.10.2005/821)

#### **Copyright Council** (14.10.2005/821)

##### **Section 55** (8.6.1984/442)

(1) The Government shall appoint a Copyright Council to assist the Ministry of Education in the handling of copyright matters and to issue statements regarding the application of this Act.

(2) Further provisions regarding the Copyright Council shall be issued by Government Decree. (14.10.2005/821)

#### **CHAPTER 7 Penal Sanctions and Liability**

##### **Sanctions in the Penal Code** (14.10.2005/821)

##### **Section 56** (14.10.2005/821)

Penal sanctions for the copyright offence are laid down in section 1 of Chapter 49 of the Penal Code (39/1889); for circumvention of a technological measure in section 3 of the Chapter; for the offence of a device for circumventing a technological measure in section 4 of the Chapter; and for the offence of electronic rights management information in section 5 of the Chapter.

##### **Copyright violation** (14.10.2005/821)

##### **Section 56a** (14.10.2005/821)

(1) Anyone who

1. wilfully or out of gross negligence makes a copy of a work, or makes a work available to the public contrary to the provisions of this Act or infringes the

provisions of section 3 concerning moral rights,

2. otherwise violates a provision protecting copyright in the present Act or acts contrary to a direction issued under section 41(2), or to a provision of section 51 or section 52, or to a prohibition referred to in section 53(1) or section 54b(1), or

3. imports into the country or brings onto the territory of Finland for transportation to a third country copies of a work which he knows or has well founded reason to suspect to have been produced outside the country under such circumstances that such production in Finland would have been punishable under this Act,

shall be sentenced to a fine for a *copyright violation*, unless the act is punishable as a copyright offence under section 1 of Chapter 49 of the Penal Code.

(2) The making of single copies for private use of a computer-readable computer program or a database which has been published or copies of which have been sold or otherwise permanently transferred with the consent of the author, or the making of single copies for private use of a work contrary to section 11(5) shall not be considered to constitute a copyright violation.

##### **Breach of confidentiality** (14.10.2005/821)

##### **Section 56b** (21.8.1995/1024)

A violation of confidentiality referred to in section 26d(3) or section 26d(4) shall be punishable under section 1 or 2 of Chapter 38 of the Penal Code, unless the act is punishable under section 5 of Chapter 40 of the Penal Code or unless a more severe punishment for the act has been laid down elsewhere in the law.

#### **Illegal distribution of a device for removing a technological measure protecting a computer program** (14.10.2005/821)

##### **Section 56c** (14.10.2005/821)

Anyone who distributes to the public for the purpose of gain or for such a purpose keeps in his possession any device whose sole purpose is unauthorised removal or circumvention of a technological device protecting a computer program shall be sentenced to a fine for *unauthorised distribution of a device for removing a technological measure protecting a computer program*.

##### **Breach of the obligation to provide information** (14.10.2005/821)

##### **Section 56d** (24.3.1995/446)

Anyone who wilfully or out of gross negligence violates the provision of section 26d(2) or the obligation to provide information or to give account, laid down in section 26k(2), shall be sentenced to a fine for a *violation of the obligation to provide information as provided in the Copyright Act*, unless a more severe punishment for the act has been laid down elsewhere in the law.

##### **Violation of a technological measure** (14.10.2005/821)

##### **Section 56e** (14.10.2005/821)

Anyone who wilfully or out of gross negligence infringes

1. the prohibition to circumvent a technological measure, as provided in section 50a, or
  2. the prohibition to produce or distribute devices for circumventing technological measures, as provided in section 50b,
- shall be sentenced, unless the act is punishable as a circumvention of a technological measure under section 3 of Chapter 49 of the Penal Code or as an offence of a device for circumventing a measure under section 4 of the Chapter, to a fine for a *violation of a technological measure*.

*Violation of electronic rights management information* (14.10.2005/821)

**Section 56f** (14.10.2005/821)

Anyone who wilfully or out of gross negligence infringes the prohibition to remove or alter electronic rights management information referred to in section 50d(1) or the prohibition referred to in subsection 2 of said section to distribute to the public or import a copy of a work for distribution to the public or communicate a work to the public in a form in which the electronic management information has been removed from the work or altered without authorisation, shall be sentenced unless the act is punishable as an offence of electronic rights management information under section 5 of Chapter 49 of the Penal Code, to a fine for a violation of *electronic rights management information*, if the perpetrator knows or has well-founded reason to suspect that his act causes, enables or conceals an infringement of the rights conferred by this Act or facilitates the infringement thereof.

**Prohibition to infringe** (21.7.2006/679)

**Section 56g** (21.7.2006/679)

If a person infringes the copyright, the Court of Justice may prohibit him to proceed with or repeat the act.

**Compensation and remuneration** (14.10.2005/821)

**Section 57** (14.10.2005/821)

(1) Anyone who in violation of this Act or a direction given under section 41(2) uses a work or imports a copy of work into the country or brings a copy of work onto the territory of Finland for transportation to a third country shall be obliged to pay a reasonable compensation to the author. The illegal reproduction of a work for private use shall be subject to compensation only in the case that the maker of the copy has known or should have known that the material copied has been made available to the public in violation of this Act.

(2) If the work is used wilfully or out of negligence, the infringer shall, in addition to compensation, pay damages for any other loss, including mental suffering and other detriment.

(3) Anyone who, otherwise than by using a work, is guilty of an act punishable under section 1, 3 or 5 of Chapter 49 of the Penal Code, or section 56a, paragraph 1 of section 56e or section 56f of this Act, shall be obliged to pay the author damages for any loss, mental suffering or other detriment caused by the crime.

(4) The compensation referred to in subsections 2 and 3 above shall also be governed by the provisions of the Tort Liability Act (412/1974).

**Forfeiture** (14.10.2005/821)

**Section 58** (14.10.2005/821)

(1) If a copy of a work has been produced, imported into the country or brought onto the territory of Finland for further transportation to a third country, or made available to the public or altered contrary to this Act or to a direction given under section 41(2) or to the provision of section 51 or 52 or to a prohibition issued under section 53(1), or if a prohibition referred to in section 50a or 50b has been violated, the court may, upon the demand of the injured party or, in a case referred to in section 50b, of a public prosecutor, order, as it deems reasonable, that the copy and any composition, printing block, mould or other piece of equipment or illegal device for circumventing technological measures be destroyed, or that such property be altered in specified ways or be transferred to the injured party against a compensation corresponding to the cost of its manufacture, or be

rendered unfit for unauthorised use. The provisions of this subsection shall apply to reproduction for private use only if the maker of the copy has known or should have known that the material reproduced has been made available to the public in violation of this Act.

(2) If a copy of a work has been made or distributed contrary to this Act, or imported to the country or brought onto the territory of Finland in a manner referred to in paragraph 3 of section 56a(1), and it is ordered to be forfeited to the State under the Summary Penal Procedures Act (692/1993), the copy of the work may be ordered to be destroyed upon the demand of the injured party. In summary penal procedures, a court may also order a device intended for circumvention of a technological measure referred to in section 50b to be forfeited to the State or destroyed if it has been manufactured, made available to the public, imported into the country for distribution to the public or brought onto the territory of Finland for transportation to a third country contrary to the provisions of section 50b(1).

(3) The provisions of subsections 1 and 2 shall not apply to a person who has acquired the property or some specific right therein in good faith, or to a work of architecture. A building may, however, be ordered to be modified as indicated by the specific features of the case and the circumstances.

**Section 59**

Notwithstanding the provisions of section 58(1) the court may, upon a request to that effect and if deemed reasonable in view of the artistic or economic value of the copies referred to in said subsection or other circumstances, permit that the copy be made available to the public or otherwise used for the intended purpose in consideration of specific remuneration to the injured party.

**Publication of judgment** (21.7.2006/679)

**Section 59a** (21.7.2006/679)

(1) A court of justice may, in a civil matter concerning copyright and upon the request of plaintiff, order a defendant to recompense costs incurred from the dissemination, by using appropriate measures, of an information about the non-appealable judgment in which the defendant has been found to infringe copyright. The order shall not be issued, if the dissemination of the information is limited elsewhere in the law. When considering the issuing of the order and the contents of it, a court of justice shall take into account the general relevance of the dissemination to the public, the quality and extent of the infringement, the costs which are caused by the dissemination and other corresponding matters.

(2) A court of justice shall order a maximum amount of the reasonable dissemination costs to be recompensed by the defendant. The plaintiff is not entitled to compensation, if the information about the judgment has not been disseminated within the time that a court of justice ordered to be run from a passed non-appealable judgment.

**Application of provisions on sanctions and compensation to certain rights related to copyright** (14.10.2005/821)

**Section 60** (21.7.2006/679)

The provisions of sections 56a, 56e–56g, 57–59 and 59a shall correspondingly apply to the rights protected under Chapter 5.

**Prevention of access to material infringing copyright** (14.10.2005/821)

**Section 60a** (14.10.2005/821)

(1) In individual cases, notwithstanding confidentiality provisions, an author or his representative shall be entitled, by the order of the court of justice, to obtain contact information from the maintainer of a transmitter, server or a similar device or other service

provider acting as an intermediary about a tele-subscriber who, unauthorised by the author, makes material protected by copyright available to the public to a significant extent in terms of the protection of the author's rights. The information shall be supplied without undue delay. The handling of the matter concerning the information to be supplied shall be governed by the provisions of Chapter 8 of the Code of Judicial Procedure.

(2) The author or his representative who has obtained contact information referred to in subsection 1 above shall be governed by the provisions of sections 4, 5, 8, 19, 31, 41 and 42 of the Act on the Protection of Privacy in Electronic Communications (516/2004) pertaining to confidentiality and the protection of privacy in communications, the handling of messages and identification data, information security, guidance and supervision, coercive measures and sanctions.

(3) An author or his representative referred to in this section shall defray the costs incurring from the enforcement of an order to supply information and recompense the maintainer of the transmitter, server or other similar device or other service provider acting as an intermediary for possible damage.

#### Section 60b (14.10.2005/821)

For the purpose of prohibiting continued violation, the author or his representative has the right to take legal action against the person who makes the allegedly copyright-infringing material available to the public. In allowing the action, the court of justice shall at the same time order that the making available of the material to the public must cease. The court of justice may impose a conditional fine to reinforce the order.

#### Section 60c (21.7.2006/679)

(1) In trying a case referred to in section 60b, the court of justice may, upon the request of the author or his representative, order the maintainer of the transmitter, server or other device or any other service provider acting as an intermediary to discontinue, on pain of fine, the making of the allegedly copyright-infringing material available to the public (*injunction to discontinue*), unless this can be regarded as unreasonable in view of the rights of the person making the material available to the public, the intermediary and the author.

(2) Before legal action referred to in section 60b is taken, the court of justice referred to in said section may, upon the request of the author or his representative, issue an injunction to discontinue, if the conditions mentioned in subsection 1 for its issue are met and if it is apparent that the author's rights would otherwise be seriously prejudiced. The court of justice shall reserve an opportunity to be heard both for the person against whom the injunction is sought and for the person making the allegedly copyright-infringing material available to the public. A service of a notice to the person against whom the injunction is sought may be delivered by posting it or by using fax or electronic mail. The handling of the matter shall otherwise come under the provisions of Chapter 8 of the Code of Judicial Procedure.

(3) Upon the request the court may issue an interim injunction to discontinue referred to subsection 2 without hearing the alleged infringer, if deemed necessary for the urgency of the case. The injunction shall remain in force until further notice. After the injunction has been issued, the alleged infringer shall be reserved an opportunity to be heard without delay. After hearing the alleged infringer, the court shall decide without delay whether it retains the injunction in force or cancels it.

(4) An injunction to discontinue issued pursuant to this section shall not prejudice the right of a third person to send and receive messages. The injunction to discontinue shall enter into force when the applicant provides the security referred to in [section 16 of Chapter 7 of the Enforcement Act (377/1895)] to the execution officer, unless otherwise provided in section 7 of Chapter 7 of the Code of Judicial Procedure. The injunction to discontinue issued by virtue of subsection 2 or 3 of this section shall expire, if a legal action has not

<sup>1</sup> Enforcement Code (705/2007), Section 2 of Chapter 8

been taken within one month from the issuing of the injunction.

(5) If the legal action referred to in section 60b is dismissed or ruled inadmissible or the case is discontinued due to that plaintiff has cancelled his legal action or failed to appear in court of justice, the person requesting the injunction to discontinue must recompense the person against whom the injunction is issued, as well as alleged infringer for damage caused by the enforcement of the injunction and for the costs incurring in the matter. The same shall apply when the injunction to discontinue is cancelled by virtue of subsection 3 or expires by virtue of subsection 4. The taking of legal action for the compensation of damages and costs shall be governed by the provisions of section 12 of Chapter 7 of the Code of Judicial Procedure.

#### Section 60d (14.10.2005/821)

The provisions of sections 60a–60c above shall correspondingly apply to the holder of a right related to copyright conferred by Chapter 5 and his representative.

#### Forum (14.10.2005/821)

##### Section 61

The competent court in cases involving radio or television transmissions which violate this Act shall be the District Court of Helsinki.

#### Right to institute criminal proceedings (14.10.2005/821)

##### Section 62

(1) A public prosecutor may not bring criminal action in cases other than a copyright violation in breach of section 51 or section 52 or a violation of a technological measure referred to in paragraph 2 of section 56e, unless the injured party has filed for prosecution on the matter. (14.10.2005/821)

(2) An action for a breach of section 3 or of a direction given under section 4(2) may be brought by the surviving spouse, by heirs in the ascending or descending line or by brothers and sisters, or by a person similarly related to the author by adoption. The lawsuit for a breach of a prohibition mentioned in section 53(1) above shall be filed by the authority referred to in said section.

## CHAPTER 8

### Applicability of the Act

#### Section 63 (31.7.1974/648)

(1) The provisions of this Act relating to copyright shall apply:

1. to works the author of which is a Finnish national or a person having his habitual residence in Finland;
2. to works first published in Finland or published in Finland within thirty days of having first been published in another country;
3. to a cinematographic work the producer of which has his headquarters or habitual residence in Finland;
4. to works of architecture located in Finland; and
5. to works of art incorporated in a building located in Finland or otherwise fixed to the ground in Finland.

(2) In the application of paragraph 3 of subsection 1 above, unless otherwise proved, the producer of the cinematographic work shall be deemed to be the person or company whose name is mentioned in the usual manner in the cinematographic work.

(3) The provisions of Chapter 2b above shall be applied to the resale of works of fine art taking place in Finland. If the author of the work is a national of a state not belonging to

the European Economic Area and has no habitual residence within the European Economic Area, the provisions of Chapter 2b shall be applied only if the author is a national of a state that reciprocally applies provisions concerning a corresponding royalty to the resale taking place in that country. The Commission of the European Communities shall publish a list of these countries. The provisions of Chapter 2b shall be applied to those entitled under such author only if they are nationals of a country included in the Commission's list. (5.5.2006/345)

(4) The provisions of sections 51–53 above shall apply regardless of who created the work and where the work was published. (24.3.1995/446)

#### Section 63a (22.12.1995/1654)

The provisions of section 44a shall apply to a person who is a national of a State belonging to the European Economic Area or has habitual residence in such a State, and to a legal entity having its statutory domicile in a State belonging to the European Economic Area.

#### Section 64 (24.3.1995/446)

- (1) The provisions of section 45 above shall apply if:
1. the performance takes place in Finland;
  2. the performance has been recorded on a device referred to in subsection 2; or
  3. the performance, which has not been recorded on a phonogram, is included in a transmission referred to in subsection 6.
- (2) The provisions of section 46 above shall apply to a device the sound on which has been recorded in Finland.
- (3) The provisions of section 46a above shall apply to a device the moving images on which have been recorded in Finland.
- (4) The provisions of section 47(1) and (2) shall apply to a public performance which takes place in Finland, to other original communication to the public than on-demand communication which takes place in Finland, and to retransmission which takes place in Finland, if a device referred to in subsection 2 of this section is used in the performance, communication or retransmission. (14.10.2005/821)
- (5) The provisions of section 47(3) shall apply to a public performance and to other communication to the public than on-demand communication which takes place in Finland if the performance or communication involves a music recording containing images which has been distributed or communicated to the public in the commercial market and which contains a performance of a musical work recorded in Finland. (14.10.2005/821)
- (6) The provisions of section 48 above shall apply:
1. to a radio and television transmission which takes place in Finland; and
  2. to a radio and television transmission which takes place elsewhere, if the headquarters of the transmitting organisation is in Finland.
- (7) The provisions of paragraph 1 of section 49(1) above shall apply to a product which was first published in Finland. The provisions of paragraph 2 of section 49(1) above shall apply to a product the maker of which is a national of a State belonging to the European Economic Area or the maker of which habitually resides in such a State. The provisions of paragraph 2 of section 49(1) above shall also apply to a product the maker of which is a company or a firm set up in accordance with the law of a State belonging to the European Economic Area and having its statutory domicile, central administration or principal place of business in a State belonging to the European Economic Area. If such a company or firm only has its statutory domicile in a State belonging to the European Economic Area, the provisions of paragraph 2 of section 49(1) above shall apply only if its operations have actual and continuous links with the economy of a State belonging to the European Economic Area. (3.4.1998/250)
- (8) The provisions in paragraphs 1, 2 and 5 of section 63(1) regarding a work shall correspondingly apply to a photographic picture referred to in section 49a.
- (9) The provisions of section 50 above shall apply to a press report which has been received in Finland.

#### Section 64a (24.3.1995/446)

(1) When programme-carrying signals intended for reception by the public and carrying a work protected under this Act are introduced in Finland into an uninterrupted chain of communication leading to a satellite and back down towards the earth under the control and responsibility of a broadcasting organisation, this satellite communication to the public shall be governed by the provisions of section 2 on making available to the public and other provisions of this Act on radio and television transmissions.

(2) If the communication to the public by satellite referred to in subsection 1 takes place in a State not belonging to the European Economic Area where the level of legal protection does not correspond to the level of protection provided by Chapter 2 of the Council Directive (93/83/EEC) on the Coordination of Certain Rules Concerning Copyright and Rights Related to Copyright Applicable to Satellite Broadcasting and Cable Retransmission, and

1. the signals are transmitted towards the satellite from a transmission station situated in Finland, or,
  2. in a case in which a transmitting station situated in Finland is not used, a broadcasting organisation established in Finland has commissioned others to carry out the act of communication,
- the communication to the public by satellite shall be deemed to take place in Finland. The satellite communication shall be governed by the provisions of section 2 on making available to the public and other provisions of this Act on radio and television transmissions.

#### Section 64b (14.10.2005/821)

- (1) The injunctions provided for in sections 50a, 50b and 50d shall apply to a procedure referred to in said sections which takes place in Finland.
- (2) The provisions of section 50e shall apply to the use of works in Finland.

#### Section 65

On a condition of reciprocity, the President of the Republic may issue orders for the application of this Act in relation to other countries and to works first published by an international organisation and to unpublished works which such organisation has a right to publish.

#### Section 66

Subject to the provisions of sections 67–71, this Act shall also apply to literary or artistic works completed before the Act comes into force.

#### Section 67

Copies of a work made under a previous Act may be freely distributed and displayed. The rental of sheet music and the right to provide for a payment by decree shall, however, be governed by the provisions of section [23].

#### Section 68

Type matter, printing blocks, moulds and other devices produced under the previous law for the reproduction of a particular work may be used according to their purpose until the end of 1962, notwithstanding the provisions of the present Act. The provisions of section 67 shall correspondingly apply to copies produced in the course of such use.

#### Section 69

Copyright in newspapers, periodicals, and other works which consist of independent contributions by several contributors and which are published before this Act comes into force shall belong to the editor in accordance with section 5, and the term of protection shall be calculated according to section 44.

**Section 70**

- (1) A contract on the transfer of copyright concluded before the coming into force of the present Act shall come under the previous Act, but even such contracts shall be governed by the provisions of section 29.
- (2) Any privileges and injunctions applicable at the time of the coming into force of the present Act shall remain in force.

**Section 71**

If, before the coming into force of this Act, an author has transferred a work of art, or has executed a drawing on commission, his right to transfer a duplicate of the same work of art to a third party or to make for a third party a work based upon the same drawing, shall be governed by the provisions of the previous law. The previous law shall also apply to a portrait executed before the coming into force of this Act, insofar as concerns the rights of the author in respect thereof.

**Section 72**

- (1) The provisions of sections 66–68 shall correspondingly apply to the rights protected under Chapter 5, (22.12.1995/1654)
- (2) An agreement referred to in section 45 concerning recording on a device which has been concluded before this Act comes into force shall correspondingly come under the provision of section 70(1).

**Section 73**

This Act shall come into force on September 1, 1961. It abrogates the Act of June 3, 1927 (No. 174/27) on Copyright in Products of Intellectual Activity, as well as section 28 of the Decree of March 15, 1880 (No. 8/80) Relating to the Rights of Writers and Artists in Respect of the Products of Their Labour.

## **APPENDIX 9**

## REGULATIONS CONCERNING CO-PRODUCTION SUPPORT FOR FULL-LENGTH FEATURE FILMS, ANIMATIONS AND DOCUMENTARIES

### 1 ELIGIBILITY CRITERIA

#### 1.1. General provisions

- 1.1.1. Projects for feature films, animations and documentaries of a minimum length of 70 minutes, intended for cinema release, are eligible.
- 1.1.2. Projects submitted must be co-productions between at least two independent producers, established in different member states of the Fund.
- 1.1.3. Projects submitted must comply with the legislation of the countries concerned, the bilateral treaties in force between the co-producing countries or, where applicable, with the European Convention on Cinematographic Co-production. For the purposes of these regulations, the awarding of national public support will be considered, where appropriate, equivalent to national accreditation (co-production status certificate) issued by the competent national authorities.
- 1.1.4. Projects submitted must conform to the cultural objectives of the Fund.
- 1.1.5. Projects of a blatantly pornographic nature or advocating violence or openly inciting to a violation of human rights are not eligible.
- 1.1.6. Projects must include a digital master copy for cinema release (minimum 2K, compatible with DCI specifications or ISO norms on D-Cinema).

#### 1.2. Eligible producers

- 1.2.1. Financial support may only be awarded to European natural or legal persons governed by the legislation of one of the Fund's member states, whose principal activity consists in producing cinematographic works, and whose origins are independent of public or private broadcasting organisations or telecom companies.
- 1.2.2. A company is considered European if it is majority owned and continues to be majority owned, either directly or indirectly, by nationals of the member states.
- 1.2.3. A production company is considered independent when less than 25% of its share capital is held by a single broadcaster or less than 50% where several broadcasters are involved.
- 1.2.4. Producers who have previously received support from Eurimages must have met all their contractual obligations to the Fund, in particular the submission of revenue statements for any project(s) previously supported by Eurimages and the reimbursement of any outstanding amounts due.

#### 1.3. Co-production structure

- 1.3.1. In the case of a multilateral co-production, the participation of the majority co-producer must not exceed 70% of the total co-production budget and the participation of each minority co-producer must not be lower than 10%.
- In the case of a bilateral co-production, the participation of the majority co-producer must not exceed 80% of the total co-production budget and the participation of the minority co-producer must not be lower than 20%.

Notwithstanding the above, in the case of bilateral co-productions with a budget superior to 5 million €, the participation of the majority co-producer must not exceed 90% of the total co-production budget.

- 1.3.2. The structure of the co-production shall be attested by a duly signed co-production agreement. For the purposes of the project selection procedure, a deal memo may exceptionally be accepted provided it contains detailed provisions on the following essential aspects of the co-production:

- clear indication of the participation of each co-producer in the financing of the project;
- joint ownership of all the rights;
- sharing of the revenues between the co-producers (exclusive and/or shared territories);
- definition of the total budget, spending requirements and the event of over-budget;
- reference to the treaties applicable.

#### 1.4. Participation of producers and financiers established in non-member states of the Fund

- 1.4.1. Co-producers from non-member states of the Fund may participate in the project provided that their combined co-production percentage does not exceed 30% of the total co-production budget.

- 1.4.2. The Executive Director may carry out any verification he or she considers appropriate in order to ensure that control of the project remains in the hands of the co-producers from the member states of the Eurimages Fund.

#### 1.5. Technical and artistic co-operation and financial co-productions

- 1.5.1. Projects must display artistic and/or technical co-operation between at least two co-producers established in different member states of the Fund.

This co-operation will be assessed on the basis of the nationality and/or residence of the heads of departments (director, scriptwriter, composer, director of photography, sound engineer, editor, art director, costumes) and of the main roles (first, second and third role), as well as on the studio or shooting location, post-production location and service providers.

- 1.5.2. However, a co-production with an exclusively financial contribution from one or more co-producers is also eligible on condition that it has access to national accreditation in the co-producing countries.

#### 1.6. European project



1.6.1. The director of the film must possess a valid passport or long-term residence permit issued by one of the member states of the Council of Europe.

1.6.2. In the case of fiction projects, the European character will be assessed on the basis of the points system included in the European Convention on Cinematographic Co-production. These projects must achieve at least 15 out of 19 points, according to the points system set out below:

Director	3
Scriptwriter	3
Composer	1
First role	3
Second role	2
Third role	1
Cameraman	1
Sound recordist and mixer	1
Editor	1
Art director and costumes	1
Studio or shooting location	1
Post-production location	1
<b>TOTAL</b>	<b>19</b>

First, second and third roles are determined by the number of days worked.

1.6.3. In the case of animation projects, the European character will be assessed on the basis of the points system set out below. The project must achieve at least 14 out of 21 points:

Conception	1
Script	2
Character design	2
Music composition	1
Directing	2
Storyboard	2
Chief Decorator	1
Computer backgrounds	1
Layout	2
50% of the expenses for animation in Europe	2
50% of the colouring in Europe	2
Compositing	1
Editing	1
Sound	1
<b>TOTAL</b>	<b>21</b>

1.6.4. In the case of documentary projects, the European character will be assessed on the basis of the points system set out below. The project must achieve at least 50% of the total points:

Director	3
Scriptwriter	2
Cameraman	2
Editor	2
Shooting location	2
Post-production location	2
Researcher	1
Composer	1
Sound engineer	1

1.6.5. A project that does not achieve the minimum points described in the provisions above may still be considered eligible on condition that it has access to national accreditation in accordance with the legislation in force in the co-producing countries concerned.

Compliance with this requirement shall be attested by written confirmation of provisional accreditation (provisional co-production status certificate) granted by the competent national authorities.

### 1.7. Start of principal photography

1.7.1. Applications for fiction and documentary projects are eligible only if principal photography has not commenced at the time of the Board of Management's examination of the application and is scheduled to commence not later than six months after this date.

1.7.2. The Executive Director may grant a derogation from Article 1.7.1 where pre-shooting for a limited duration is required for climatic or technical reasons. The Executive Director may also agree to up half of the total shooting taking place before the time of the Board of Management's examination of the application where there are unavoidable and duly justified reasons.

A written request setting out the reasons for these derogations must be sent to the Executive Director prior to the submission of the application.

1.7.3. Applications for animation projects are eligible only if principal animation has not commenced at the time of the Board of Management's examination of the application and is scheduled to commence no later than six months after this date.

### 1.8. Copyright regulations and joint ownership of the negative

1.8.1. Projects submitted must comply with the copyright regulations in force in the European co-producing countries, *inter alia* with regard to decisions concerning the final cut.

1.8.2. The negative must be jointly owned by all co-producers.

### 1.9. Financial requirements

1.9.1. Projects should have the benefit, in each of the co-producing countries, of either public support, or a television pre-sale, or a minimum guarantee or any other financing arrangement verifiable by and acceptable to the Executive Director (except for equity investments, deferrals and in-kind contributions).

1.9.2. At least 50% of the financing in each of the co-producing countries must be confirmed by formal undertakings or agreements in principle such as contracts, deal memos, letters of intent with amounts, confirmations of public support and bank statements. However, a bank statement cannot be the sole confirmation that the financing threshold has been met. Deferrals (including producers' fee and overheads) and in-kind contributions shall be accepted as confirmed sources of financing only up to a maximum of 15% of the total co-production budget.

1.9.3 The Executive Director may request any further evidence he or she may consider necessary in order to assess the financial capacity of the co-producers or financiers.

1.9.4. The production budget shall clearly include the costs necessary for the completion of a digital master copy for cinema release (minimum 2K, compatible with DCI specifications or ISO norms on D-Cinema).

## 2 CALL FOR PROJECTS

### 2.1. Applications

2.1.1. Applications for financial support shall be submitted to the Executive Director of Eurimages by one of the co-producers, with the consent of all the co-producers attested in writing.

2.1.2. Applications shall be submitted in English or French in accordance with the instructions set out in the application form, together with all items referred to in the checklist attached to the application form (including the relevant evidence of financing). Incomplete applications or projects which do not conform to the eligibility criteria at the time when they are submitted for funding shall be declared ineligible by the Secretariat and shall not be included on the agenda of Board of Management meetings.

2.1.3. Co-producers must contact their National Representatives on the Board of Management of Eurimages at the earliest opportunity. If one of the National Representatives concerned has not been contacted prior to the meeting of the Board of Management, the project shall be withdrawn from the agenda.

2.1.4. The Executive Director may carry out any verification he or she considers appropriate as to the compliance of the project with the Eurimages regulations.

### 2.2. Deadlines

2.2.1. Application deadlines, fixed annually by the Board of Management, will be published on the Eurimages website: <http://www.coe.int/Eurimages>.

2.2.2. Applications must be received by the Secretariat without exception before 6 pm on the day of the application deadline (date of receipt alone is considered valid).

### 2.3. Currency and applicable exchange rates

2.3.1. The accounts of Eurimages are kept in euros, and the amount of financial support is expressed in euros.

2.3.2. In determining the equivalent in euros of the total production costs, of the contribution of each co-production partner and of the amount of financial support applied for, the only applicable exchange rate for foreign currencies into euros, is that regularly fixed by the Finance Division of the Council of Europe and published on the Eurimages website: <http://www.coe.int/Eurimages>.

### 2.4. Re-submissions

2.4.1. The same project cannot be placed on the agenda of the Board of Management and then withdrawn more than twice.

2.4.2. A project previously rejected by the Board of Management cannot be re-submitted.

2.4.3. It must be noted that a project withdrawn from the agenda will not automatically be placed on the agenda of the next Board of Management meeting. Any request for re-submission must be made in writing by the delegate producer within the application deadlines mentioned under para 2.2.

## 3 SELECTION OF PROJECTS

### 3.1. Analysis by Secretariat

The Executive Director will provide the Board of Management with a systematic and detailed analysis of each project.

### 3.2 Selection criteria

3.2.1. The Board of Management will select projects keeping in mind the objectives of the Fund.

3.2.2. In doing so, it will carry out a comparative analysis of the projects submitted, through an overall evaluation based upon the application of the following selection criteria:

#### ARTISTIC CRITERIA

Quality of the script/level of development:

- Story and theme (originality of content, subject);
- Characters and dialogue;
- Narrative structure;
- Style (director's intention, cinematic vision, genre, tone).

Contribution of the creative team (including experience, track records):

- Director and author(s);
- Producers;
- Cast and crew.

#### PRODUCTION CRITERIA

- Artistic and technical co-operation;
- Circulation potential (festivals, distribution, audience);
- Financing (consistency and level of confirmed financing).

### 4 NATURE OF FINANCIAL SUPPORT AND AMOUNTS

#### 4.1. Production support

Financial support is provided in the form of a conditionally repayable interest-free loan (advance on receipts).

#### 4.2. Amount of financial support

4.2.1. Financial support shall not exceed 17% of the total production cost of the film and shall in no event be superior to 700 000 €.

4.2.2. The budget, the financing plan and the amount of support requested to Eurimages will be assessed and verified by the Executive Director.

#### 4.3. Allocation of financial support

4.3.1. The financial support shall be allocated to each co-producer according to the proportion of his or her financial participation in the co-production.

4.3.2. Eurimages financial support may be allocated disproportionately, except in the case of financial co-productions. Such disproportionate allocation to one of the co-producers shall not be lower than 10% nor exceed 50% of the total amount allocated by Eurimages to the co-production concerned. In such cases, the Eurimages contribution shall not exceed 50% of the total financing of any of the co-producers. Nevertheless, the repayment of the amount awarded will be in proportion to each producer's percentage in the co-production.

#### 4.4. Validity of the support decision

The validity of any decision to support the co-production of a cinematographic work will expire if no agreement between Eurimages and the co-producers has been entered into within a period of twelve months from the date of the Board of Management meeting at which the decision was taken and if principal photography has not commenced within the same period. In the event of duly justified reasons, the Executive Director may extend such a period by a maximum of three months.

### 5 SUPPORT AGREEMENT AND PAYMENTS

#### 5.1. Conclusion of the support agreement

5.1.1. An agreement between the co-producers involved and the Executive Director, acting on behalf of Eurimages, shall stipulate the terms on which the support is awarded.

5.1.2. The support agreement shall be drawn up upon receipt of the following documents:

- definitive co-production contract(s) plus any addenda thereto;
- revised financing plan including the actual amount of the support allocated by the Board of Management;
- confirmation of artistic and/or technical co-operation;
- confirmation of the attribution of provisional national accreditation;
- contracts or firm undertakings confirming the financing of the project;
- any other document proving that the conditions precedent set by the Board of Management have been met.

5.1.3. The Executive Director may, at his or her own discretion, terminate the support agreement 10 years after the first commercial exploitation of the film.

#### 5.2. Payment of the financial support

Unless otherwise agreed by the Executive Director of Eurimages, payment will be made in three instalments:

- 5.2.1. The first instalment of 60% of the total amount awarded is payable following:
- the signature of the support agreement as defined in Article 5.1 above;
  - the first day of principal photography.
- 5.2.2. The second instalment of 20% of the total amount awarded is payable:
- after confirmation of completion of the digital answer print from the laboratory (minimum 2K, compatible with DCI specifications or ISO norms on D-Cinema);
  - after receipt of distribution guarantees and/or pre-sales upon which binding agreements have been concluded before the answer print of the film has been completed;
  - after approval of the credit list by the Executive Director.
- 5.2.3. The third instalment of 20% of the total amount awarded is payable:
- after confirmation of cinema release in the co-producing countries or, if appropriate (documentaries only), selection in at least one significant film festival;
  - after receipt and approval by Eurimages of the total final costs of the production and the expenditure of each co-producer, presented in a standard form approved by Eurimages and certified by a qualified chartered accountant independent from the production companies involved, showing any variations in the costs compared with the budget

approved by the Board of Management;

- after receipt of the final financing plan;
- included in the financing plan and the list of deductions approved by Eurimages. Minima guarantees paid in cash shall not be accepted;
- after receipt and approval by Eurimages of the publicity material for each co-producing country and receipt of 50 copies of the DVD with English or French subtitles;
- after confirmation of attribution of definitive national accreditation.

### **5.3. Production bank account(s)**

Payment of the co-producers' share of the amount awarded shall be made by Eurimages either to the respective production bank accounts opened by each co-producer, or to a single production bank account opened by the delegate co-producer, on condition that written consent is received from each of the co-producers concerned.

### **5.4. Completion guarantee**

Should the co-producers conclude a completion guarantee, Eurimages must be a signatory to the contract and have the status of beneficiary.

## **6 REFERENCE TO EURIMAGES SUPPORT**

6.1. Eurimages support must be mentioned clearly and visibly in the main credits at the beginning of the film, as high as possible after the producers and in accordance with its financial contribution, as well as in major publicity material for the film.

6.2. The draft front and end credits must be submitted to Eurimages for prior approval. Failing this, Eurimages reserves the right to refuse payment of the outstanding balance of the support awarded.

## **7 REPAYMENT OF THE SUPPORT**

### **7.1. Eurimages recoupment corridor**

7.1.1. The support amount is repayable, from the first euro, from each producer's net receipts at a rate equal to the percentage of the Eurimages share in the financing of the film, and after deduction – if formally approved by the Secretariat – of distribution guarantees and/or pre-sales necessary for the financing of the film upon which binding agreements have been concluded before completion of the answer print. Where part of the distribution minima guarantees is financed by "Sofica" and/or other financial institutions (e.g. gap financing), these sums shall not be recouped before Eurimages. Any other deductions or comparable financing arrangements are to be approved by the Board of Management.

7.1.2. Each co-producer shall be proportionally responsible for repayment of the share of the support allocated to him or her. Repayment is due up to 100% of the amount awarded. In the case of disproportionate allocation of Eurimages support (according to the conditions under Article 4.3.2 above), the repayment of the support awarded will be in proportion to the co-production percentages.

7.1.3. When there is a group of national co-producers (ie. co-producers within the same member state), one co-producer responsible for reporting obligations and repayment of the sums due by the whole group shall be appointed. Failing this, Eurimages will appoint one.

### **7.2. Producers' net receipts**

7.2.1. The following are considered as producers' net receipts: all receipts resulting from exploitation of all or part of the film and from any products derived from the film in the territories exclusively allocated to the producers, as well as in the territories other than those exclusively allocated to the producers, after deduction of "deductible costs" linked to the exploitation of the film (as defined in Article 7.3 below). These net receipts shall constitute the basis for the reimbursement of the support.

7.2.2. Any pre-sales and distribution guarantees in excess of the financing necessary to cover the production cost approved by Eurimages as well as those concluded after completion of the answer print are considered as net receipts for the purpose of repayment to Eurimages. The Executive Director must have received valid documentation before payment of the second instalment of the support (see Article 5.2.2. above).

### **7.3. Deductible amounts**

7.3.1. The only "deductible costs" accepted by Eurimages for the calculation of net receipts are:

- a) the distribution commission up to 25% (per set of rights sold in one territory), except in domestic co-producing countries;
  - b) provided that the costs listed below are not already fully or partially included in the production budget approved by Eurimages:
    - technical costs related to the manufacture and the forwarding of release prints of the film, as well as the manufacture of a foreign language version of the work;
    - costs related to publicity for the launch of the film (P&A) announced, incurred and paid by the distributors and/or sales agents, and approved by each producer upon receipt of all items of evidence of these costs.
  - c) non-deductible taxes paid to public authorities for the exploitation of the film;
  - d) customs duties and fees to professional organisations, costs related to submission of the film to censure, control and archive bodies, insofar as they are directly related to the film concerned.
- Therefore, deferrals, equity investments, royalties, profit participations and authors' rights cannot be deducted from the revenues generated by the project.
- 7.3.2. All such "deductible costs" should be duly specified in the financial statements provided by the distributors and/or sales agents and shall be subject to verification.

All deductions must be approved by the Executive Director.

#### **7.4. Revenue statements**

7.4.1. Starting from the first commercial exploitation of the project, co-producers shall, without prior request, provide Eurimages at the end of each half-year period for the first two years and at the end of each calendar year thereafter with revenue statements concerning the exploitation of the film.

These statements shall be presented in a clear and detailed format, showing the exploitation results of the film for each type of media, clearly indicating the "deductible costs", and shall include a copy of the royalty statements from distributors and sales agents, as well as a copy of all sales and licence agreements.

Eurimages reserves the right, if necessary, to request producers to use a standard form approved by Eurimages for the presentation of revenue statements.

7.4.2. Each co-producer is obliged to provide Eurimages with a copy of all contracts for the exploitation of the film or any part thereof.

#### **7.5. Collection account**

For projects with a budget of 3 million € or more, the setting up of a collection account by a collection agency shall be obligatory.

For projects with a budget of less than 3 million €, Eurimages reserves the right to demand the setting up of a collection account by a collection agency.

In all cases, Eurimages must be a signatory to the subsequent agreement.

### **8 MODIFICATION OF THE SUPPORT GRANTED AND TERMINATION OF THE SUPPORT AGREEMENT**

#### **8.1. Evolution of the co-production**

8.1.1. Co-producers must request prior approval of the Executive Director and provide adequate documentation concerning any modification to the artistic, technical, legal or financial aspects of the project as approved by the Board of Management.

8.1.2. Any substantial modification of the artistic or financial structure of the project must be approved by the Board of Management. Any other changes shall be approved by the Executive Director.

#### **8.2. Decrease in final production costs**

Should the final production costs of the film be more than 10% lower than the budget described in the support agreement between Eurimages and the producers, the support granted by Eurimages will be reduced proportionally to the decrease exceeding 10%.

#### **8.3. Cancellation of financial support**

8.3.1. Eurimages financial support shall be cancelled if the film is not completed or theatrically exhibited in each of the co-producing countries within the time limit set in the support agreement. It shall also be cancelled or immediately repayable if a producer fails to meet the terms of these Regulations or the obligations contained in the terms of the support agreement.

8.3.2. Eurimages may exceptionally and for duly justified reasons derogate from Article 8.3.1.

### **9 DISPUTE SETTLEMENT AND INTERPRETATION OF THE REGULATIONS**

9.1. There can be no appeal against a decision of the Board of Management not to support a request for financial support.

9.2. Any dispute relating to the execution of any agreement concluded pursuant to these Regulations shall be submitted, failing a friendly settlement between the parties, for decision to an Arbitration Board composed of two arbitrators, each selected by one of the parties, and a presiding arbitrator, appointed by the other two arbitrators. If a presiding arbitrator is not appointed under the above conditions within a period of four months, the President of the European Court of Human Rights shall make the appointment.

9.3. However, the parties may submit the dispute for a decision to a single arbitrator chosen by them by common agreement or, failing such agreement, by the President of the European Court of Human Rights.

9.4. The Board referred to in paragraph 9.2 or, if appropriate, the arbitrator referred to in paragraph 9.3, shall determine the procedure to be followed.

9.5. Failing agreement between the parties on the law applicable, the Board, or if appropriate, the arbitrator, shall decide *ex aequo et bono* in the light of general legal principles, as well as observing customs used in the cinematographic and audio-visual field.

9.6. The arbitration decision shall be final and shall be binding on the parties.

9.7. The Board of Management reserves the right to interpret and amend these Regulations.



## **APPENDIX 10**



**MEDIA 2007 (2007-2013) \***

**CALL FOR PROPOSALS EACEA 25/2010**

**GUIDELINES**

**SUPPORT FOR THE DEVELOPMENT OF  
SINGLE PROJECTS  
(ANIMATION, CREATIVE DOCUMENTARY AND DRAMA)**

\* Decision N° 1718/2006/EC  
of the Parliament and of the Council

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## 1. INTRODUCTION

### Legal Basis

The current Call for Proposals and attached Guidelines (hereafter: "Call for Proposals") are based on Decision No 1718/2006/EC of the European Parliament and of the Council of 15 November 2006 concerning the implementation of a programme of support for the European audiovisual sector (MEDIA 2007).

The total budget for the MEDIA Programme 2007-2013 amounts to EUR 754,95 million.

The European Commission is responsible for the implementation of the MEDIA Programme and for the decision to grant individual European Union funds. The Education, Audiovisual and Culture Executive Agency (hereafter "the Agency") manages the MEDIA Programme on behalf and under the control of the European Commission.

The MEDIA Programme Unit of the Education, Audiovisual and Culture Executive Agency is responsible for the implementation of this Call for Proposals.

This Call is aimed at European applicants whose activities contribute to the achievement of the objectives of the MEDIA Programme as described in the European Parliament and Council Decision No 1718/2006/EC.

These Guidelines explain how to submit a proposal with a view to obtaining a European Union financial contribution.

*The implementation of this Call for Proposals is subject to the adoption of the European Union budget for the year 2011 by the budget authority.*

## 2. OBJECTIVES & PRIORITIES

### 2.1. Global objectives of the MEDIA programme

The global objectives of the MEDIA 2007 programme are to:

- Preserve and enhance European cultural and linguistic diversity and its cinematographic and audiovisual heritage, guarantee its accessibility to the public and promote intercultural dialogue;
- Increase the circulation and viewership of European audiovisual works inside and outside the European Union, including through greater cooperation between players;
- Strengthen the competitiveness of the European audiovisual sector in the framework of an open and competitive European market favourable to employment, including by promoting links between audiovisual professionals.

<sup>1</sup> published in the Official Journal of the European Communities on the 24th of November 2006 (OJ L327, pp 12-29).

### 2.2. Specific objectives of the Development support

The current Call for Proposals has the specific objective of promoting, by providing financial support, the development of production projects intended for European and international markets presented by independent European production companies in the following categories: animation, creative documentary and drama.

### 2.3. Priorities of this Call for Proposals

Three types of support for development are available within the framework of this Call for Proposals: support for Single Projects, Slate Funding and Slate Funding 2<sup>nd</sup> Stage.

**These guidelines concern support for Single Projects.** They are aimed at companies interested in developing a single project.

## 3. TIMETABLE

The Call for Proposals 25/10 is open counting from the date of its publication in the Official Journal until 11/04/2011. It has two deadlines. Applicants may only make one submission for development support throughout the duration of this Call. They must choose to which of the two deadlines they apply.

To be registered for the 1<sup>st</sup> deadline, the application for support must be sent to the Agency between the date of the publication of the Call for Proposals and 29/11/10. The intention is to inform applicants of the outcome of the selection procedure of this 1<sup>st</sup> deadline no later than the month of April 2011.

To be registered for the 2<sup>nd</sup> deadline, the application for support must be sent to the Agency between 30/11/10 and 11/04/11, the date of closure of the Call for Proposals. The intention is to inform applicants of the outcome of the selection procedure of this 2<sup>nd</sup> deadline no later than the month of September 2011.

Please read carefully section 13.3. concerning the procedures for submitting applications.

A production company can only submit one application for development support (Single Project, Slate Funding or Slate Funding 2<sup>nd</sup> Stage) for the 2011 budget year. Furthermore, a company that has a Slate Funding or Slate Funding 2<sup>nd</sup> Stage contract running cannot apply for support for a Single Project or Slate Funding. It can only apply for Slate Funding 2<sup>nd</sup> Stage under certain conditions (see the Guidelines for Slate Funding 2<sup>nd</sup> stage).

The submitted project may not have entered into production before the date of the Grant Decision or the date of signature by the last party of the agreement between the beneficiary and the Agency. The estimated date of the Grant Decision or of the signature of the agreements is June 2011 for applications submitted under the 1<sup>st</sup> deadline and November 2011 for those applications submitted under the 2<sup>nd</sup> deadline.

The period of eligibility of costs will start from the date of the submission of the application and ends no later than 30/06/2013 for requests for support submitted within the 1<sup>st</sup> deadline and no later than 30/11/2013 for those requests submitted within the 2<sup>nd</sup> deadline. If the project enters into production before the aforementioned dates, the period of eligibility of costs ends on the date of entry into production of the project.

However, the acquisition of author rights is eligible retroactively for a period of 12 months preceding the date of submission of the application.

The maximum duration of the action is until 30/06/2013 for the applicants registered for the 1<sup>st</sup> deadline and until 30/11/2013 for the applicants registered for the 2<sup>nd</sup> deadline. However, if after the Grant Decision or signing of the agreement it becomes impossible for the beneficiary, for fully justified reasons beyond their control, to complete the action within the scheduled period, an extension to the eligibility period may be granted for a maximum of 6 additional months if requested at the latest one month before the closing date of the action.

With the exception of the acquisition of rights, all costs incurred before the date of the submission of the application will be considered ineligible.

#### 4. AVAILABLE BUDGET

The total budget earmarked for the co-financing of actions under this Call for Proposals is estimated at EUR 17m, subject to the adoption of the European Union budget for the year 2011 by the budget authority.

Of this EUR 17m, the budget allocated to co-financing Single Projects is estimated to be EUR 7m (EUR 3,5m for the 1<sup>st</sup> deadline and EUR 3,5m for the 2<sup>nd</sup>).

The budget allocated to co-financing Slate Funding is estimated to be 6m and to co-financing Slate Funding 2<sup>nd</sup> Stage is estimated to be EUR 4m (see the specific Guidelines).

Financial contributions from the Commission may not exceed 50% of the total eligible costs. However the MEDIA Programme's funding may be raised up to 60% for actions intending to promote European cultural diversity.

Actions presenting an interest in promoting European cultural diversity are those which bring together different cultural identities national and/or regional within a framework of inter-cultural dialogue among at least two European countries. The action must be centred on the cultural specificities of the countries involved and highlight the values held by their populations.

The selection of an action does not signify agreement to the level of financial support requested. The final amount to be awarded will be determined within the available budgetary resources and in consideration of the nature and costs of the action.

Each grant will amount to between EUR 10,000 and EUR 60,000 except for feature-length animations for theatrical release, for which the maximum is EUR 80,000.

The recipient company must guarantee the remaining financing.

The European Union grant will be detailed in the Grant Decision or Agreement between the Agency and the beneficiary company both as a percentage of the development budget and as a total amount.

The Agency reserves the right not to distribute all the funds available.

#### 5. ELIGIBILITY CRITERIA

Only applications which comply with the following criteria will be the subject of an in-depth evaluation.

The Agency reserves the right not to process proposals which lack the required documentation or information (documents listed in the application form) at the deadline. Even in the case of resubmission all the required documentation must be provided.

##### 5.1 Eligible applicants

**Independent European companies having as their main activity audiovisual production and which have been legally constituted for at least 12 months.**

The present Call is open to independent European production companies that have been registered for at least 12 months at the date of submission.

A European production company is a company whose main object and activity is audiovisual production and which is registered in one of the Member States of the European Union or in one of the countries participating in the MEDIA 2007 Programme and which is owned and continues to be owned, whether directly or by majority shareholding, by nationals from these countries.

An independent production company is an audiovisual production company which does not have majority control by a television broadcaster, either in shareholding or commercial terms. Majority control is considered to occur when more than 25% of the share capital of a production company is held by a single broadcaster (50% when several broadcasters are involved) or when, over a three-year period, more than 90% of a production company's revenue is generated in co-operation with a single broadcaster.

The following are not eligible:

- Foundations, Institutes, Universities, associations and other legal bodies acting in the public interest;
- applications from groups of companies;
- private individuals.

##### 5.1.1 Legal Entity

In order to demonstrate its existence as a legal entity, the applicant must provide the following documents:

- bank details form, duly completed and signed (the form relating to the financial identification of the applicant company according to the country in which it is established is available on the following website: [http://ec.europa.eu/budget/execution/tiers\\_en.htm](http://ec.europa.eu/budget/execution/tiers_en.htm))
- extract from the official gazette/trade register, and certificate of liability to VAT (if, as in certain countries, the trade register number and VAT number are identical, only one of these documents is required). The form relating to the legal structure of the applicant company according to the country in which it is established is available on the following website: [http://ec.europa.eu/budget/execution/legal\\_entities\\_en.htm](http://ec.europa.eu/budget/execution/legal_entities_en.htm)

**5.1.2. Companies able to provide evidence that they have completed and commercially distributed a previous eligible work**

**Companies submitting an application must have produced a work and prove:**

- that they were the sole production company;
- or that they were, in the case of a co-production with another production company, the major co-producer in the financing plan or the delegate producer;
- or that their Chief Executive or one of their shareholders has a personal credit on the work as producer or delegate producer.

By way of derogation a previous work produced by a company other than the applicant company may be accepted, if the applicant company can show that its Chief Executive, one of its shareholders (individual person) or one of the producers it employs (this producer must have been a fulltime employee of the applicant company for at least twelve months on the date of the application), has a personal credit in the role of producer, delegate producer or executive producer.

Only official credits as producer, delegate producer or executive producer that appear in the onscreen credits are accepted as proof of personal credits. Declarations of third parties will not be taken into account.

If the previous work is a series, the applicant company must provide the evidence listed above for the entire series.

**The previous work must be in one of the following eligible categories (see 5.3):**

- an animation of at least 24 minutes (the total length of the series in the case of a series). Two animation shorts can be accepted only in the case of an application for support for an animation project;
- a creative documentary of at least 25 minutes (length per episode in the case of a series);
- a drama of at least 50 minutes (the total length of the series in the case of a series).

**The previous work must be completed. A production (one-off project or series) is regarded as completed on:**

- the date of official delivery by the laboratory of the answer print (for cinema films);
- the date of official delivery of the master copy to the broadcaster (for works intended for television);

In respect to series, the entire series must be completed by the date of submission.

**The applicant company must also show that the work has been commercially distributed during the period between 1 January 2008 and the date of submission of its application.**

Distribution is understood to be all forms of commercial release of the work to the public: cinema, television, DVD and on-line distribution. It may be the first commercial release or a re-release or a re-publication. The following are not considered to be commercial releases: free on-line access and screenings at festival, cinema museums, cultural associations and other comparable structures.

If the previous experience is the production of two animation shorts, exhibition at festivals will, however, be accepted as proof of distribution.

The date taken into account in verifying that distribution has taken place during the reference period is the date on which the distribution contract was signed or the date the distribution took place (date of cinema release, broadcast date etc.).

Applications sent without a duly signed distribution agreement or duly documented proof that the distribution took place within the reference period will be directly eliminated from the selection procedure.

**5.2 Eligible Countries**

Legal entities submitting an application must be established in one of the following countries:

- Member States of the European Union;
- Countries in the European Economic Area participating in the MEDIA 2007 Programme (Iceland, Liechtenstein and Norway);
- Switzerland and Croatia.

**5.3 Eligible activities**

The development activities for the following audiovisual works (one-offs or series) are eligible.

**5.3.1. Animation projects intended for commercial exploitation**

Only animation projects (whether a one-off or a series) of no less than 24 minutes are eligible.

**5.3.2. Creative documentaries intended for commercial exploitation**

Creative documentaries take a real-life subject as their starting point but require substantial original writing and set out an author's and/or director's point of view.

Only documentaries of no less than 25 minutes (duration per episode in case of series) are eligible.

**5.3.3. Drama projects intended for commercial exploitation**

Only drama projects (whether a one-off or a series) of no less than 50 minutes are eligible.

**5.3.4. Ineligible Activities**

The development and production activities for the following categories of work are ineligible:

- live recordings, TV games, talk shows, reality shows or educational, teaching and 'how-to' programmes;
- documentaries promoting tourism, "making-of", reports, animal reportages, news programmes and "docu-soaps";
- projects promoting, directly or indirectly, messages that are at odds with the policies of the European Union. For example, projects that may be contrary to the interests of public health (alcohol, tobacco, drugs), respect for human rights, people's security, freedom of expression etc.;
- projects promoting violence and/or racism and/or with a pornographic content;
- works of a promotional nature;

- institutional productions to promote a specific organisation or its activities.

#### 5.4 Eligible proposals

A proposal is eligible if:

- it is both submitted online using the application form (eForm) and the application package is sent by registered mail or private courier no later than the specified deadline for submission of proposals (see Timetable 3);
- the application package contains the signed requested attachments (original signatures of the person authorised to enter into legally binding commitment on behalf of the applicant organisations), the printed online application form, all annexes to the application form and the requested supporting documents.

Applicants must submit a budget that is balanced in terms of expenditure and revenue and must comply with the ceiling for European Union cofinancing, set at 50% (60% for actions presenting an interest in promoting European cultural diversity).

#### 6. EXCLUSION CRITERIA

Applicants must state that they are not in any of the situations described in Articles 93(1), 94 and 96(2)(a) of the Financial Regulation applicable to the general budget of the European Communities (Council Regulation (EC, Euratom) No 1605/2002 as amended) and set out below.

Applicants will be excluded from participating in the Call for Proposals if they are in any of the following situations:

- a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- b) they have been convicted of an offence concerning their professional conduct by a judgment which has the force of *res judicata*;
- c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;
- e) they have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Union's financial interests;
- f) they are subject to an administrative penalty referred to in Article 96(1) of the Financial Regulation (Council Regulation 1605/2002 of 25/06/02, as amended).

Applicants will not be granted financial assistance if, on the date of the grant award procedure, they:

- a) are subject to a conflict of interests;
- b) are guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the grant award procedure, or fail to supply this information;
- c) find themselves in one of the situations of exclusion, referred to in Art 93(1) of the Financial Regulation, for this grant award procedure

and they are subject to the penalty consisting of the exclusion from contracts and grants financed by the budget for a maximum period of ten years.

In accordance with Articles from 93 to 96 of the Financial Regulation, administrative and financial penalties may be imposed on applicants who are guilty of misrepresentation or are found to have seriously failed to meet their contractual obligations under a previous contract award procedure.

To comply with these provisions, applicants must sign a declaration on their honour certifying that they are not in any of the situations referred to in Articles 93 and 94 of the Financial Regulation.

#### 7. SELECTION CRITERIA

Applicants must have stable and sufficient sources of funding to maintain their activity throughout the period during which the action is being carried out or the year for which the grant is awarded and to participate in its funding. They must have the professional competencies and qualifications required to complete the proposed action.

Applicants must submit a declaration on their honour, completed and signed, attesting to their status as a legal entity and to their financial and operational capacity to complete the proposed activities.

##### 7.1 Operational capacity

In order to permit an assessment of their operational capacity, applicants must submit, together with their applications:

- the details of the experience of the members of the applicant company's team directly attached to the development of the submitted action;
- a list of productions already produced by the applicant Company and/or the producer of the referral work (see 5.1.2.);
- the documents relating to the ownership of rights.

No later than on the date of submission, the applicant company must show that it holds the majority of the rights relating to the project for which support is being sought. It is required to provide a contract covering the rights to the artistic material included in the application. This must include at least: concept, subject, treatment, script or bible. This contract must be duly signed and dated by the author(s).

The following types of contracts will be accepted:

- an option agreement concerning the transfer of rights between the author and the applicant company, of an adequate duration to cover the whole development schedule and clearly setting out the conditions for exercising the option; or
  - a contract transferring the rights from the author to the applicant company.
- The option agreement or transfer of rights contract can be replaced by:
- a unilateral declaration of the transfer of rights to the applicant company where the author is the producer, a shareholder or an employee of the company;
  - a co-production or co-development agreement duly dated and signed by the parties and clearly showing that the applicant company holds the majority of the rights at the date of the application.

If the project is an adaptation of an existing work (novel, biography etc.), the applicant company must also show that it holds the majority of the rights relating to the rights of adaptation to this work with an option agreement or transfer of rights contract duly dated and signed.

7.2 Financial capacity

In order to permit an assessment of their financial capacity, applicants must submit:

- For requests exceeding EUR 25,000 the profit and loss accounts of the applicant, together with the balance sheet for the 2 financial years for which the accounts have been closed for profit companies and of the last year for non profit companies.

Please note that the data to be provided are different depending on whether the applicant is a profit or a non profit company. The Agency applies these criteria taking into account the legislative framework of the different countries participating in the Programme.

If, on the basis of the documents submitted, the Agency considers that financial capacity has not been proved or is not satisfactory, it may:

- o reject the application
- o ask for further information
- o require a guarantee (see 9.3)
- o offer a Grant Decision/Agreement without pre-financing or make a first payment on the basis of expenses already incurred.

Exemptions

The verification of financial capacity shall not apply to grants below/equal to EUR 25,000. If such is the case the applicant must certify that it has the operational and financial capacity to complete the proposed activities.

8. AWARD CRITERIA

Eligible applications conforming to the selection requirements will be assessed on the basis of the following criteria:

8.1. Criteria for automatic points

Criteria	Number of points
A project which has been the subject of training supported by the MEDIA Programme	2
An applicant company established in a country with low production capacity <sup>2</sup>	1
An applicant company which benefited from development support under MEDIA PLUS or MEDIA 2007 for a project that has been produced	1 (No matter how many projects supported by MEDIA have been produced)

<sup>2</sup> The following are considered as countries with low production capacity: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Greece, Hungary, Iceland, Eire/Ireland, Liechtenstein, Latvia, Lithuania, Luxembourg, Malta, Norway, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden and Switzerland.

8.2. Evaluation Criteria considered by the independent experts

Applications will be evaluated in terms of the award criteria with the help of independent experts. On the basis of the independent experts' opinions, a list of projects, ranked according to merit, will be established. Grants are allocated to the best projects within the limits of the available budget.

The Agency selects experts on the basis of their independence, professional experience and quality. Their evaluations may not be communicated to applicants, for reasons of confidentiality and impartiality.

Points will be allocated out of a total of 100 on the basis of the following weightings:

Criteria relating to the applicant company			Criteria relating to the submitted project	
Criteria	Weighting	Criteria	Weighting	
Quality of the development strategy	10	Quality of the project	40	
Consistency of the development budget	10	Potential for production and the feasibility of the project	10	
Quality of the financing strategy	10	Potential for European and international distribution	10	
Quality of the distribution strategy	10			
<b>Total</b>	<b>40 points</b>	<b>Total</b>	<b>60 points</b>	

Total score is achieved by adding the automatic points and the award criteria points allocated by the independent experts

9. FINANCIAL CONDITIONS

European Union grants are incentives to carry out actions which would not be feasible without the MEDIA Programme financial support, and are based on the principle of co-financing. They complement the applicant's own financial contribution and/or national, regional or private assistance that has been obtained elsewhere.

Acceptance of an application by the Agency does not constitute an undertaking to award a financial contribution equal to the amount requested by the beneficiary. The awarding of a grant does not establish an entitlement for subsequent years.

Grant applications must include a detailed estimated budget in which all prices are given in euro.

Applicants from countries outside the euro zone must use the monthly accounting rate applicable at the beginning of the month of the application and available from the MEDIA Desks and Antennae or from the website of the Commission at: <http://ec.europa.eu/budget/infoc euro>.

The budget for the action attached to the application must have revenue and expenditure in balance and show clearly the costs which are eligible for financing from the Union budget.

The allocated amount may not exceed the amount requested.

The applicant must indicate the sources and amounts any other funding received or applied for in the same financial year for the same action.

The beneficiary shall supply evidence of the co-financing provided, either by way of own resources, or in the form of financial transfers from third parties. The applicants shall provide an explicit undertaking from each co-financing organisation to provide the amount of funding stated in the grant application for the operation.

The Agency grant may not have the purpose or effect of producing a profit for the beneficiary. Profit is defined as a surplus of receipts over costs. The amount of the grant will be reduced by the amount of any surplus.

#### **9.1 Contractual provisions and Payment procedures**

In the event of definitive approval by the Agency, a Grant Decision or a Grant Agreement, drawn up in euro and detailing the conditions and level of funding will be sent to the beneficiary.

- In case of beneficiaries established outside the European Union: the 2 copies of the original Grant Agreement must be signed by the beneficiary and returned to the Agency immediately. The Agency will sign it last.
- In case of beneficiaries established within the European Union Member States: the Grant Decision must not be returned to the Agency. The general conditions applicable to the Decision (General Conditions 2.1.1.3) are available in the 'Documents register' of the Agency website (Calls for proposals IIa) [http://eacea.ec.europa.eu/about/documents/calls\\_gen\\_conditions/2a\\_action\\_nocontribution\\_en.pdf](http://eacea.ec.europa.eu/about/documents/calls_gen_conditions/2a_action_nocontribution_en.pdf)

As regards Grant Decisions, beneficiaries understand that:

Submission of a grant application implies acceptance of these General Conditions. These General Conditions bind the beneficiary to whom the grant is awarded and shall constitute an annex to the Grant Decision.

The account or sub-account indicated by the beneficiary must make it possible to identify the funds transferred by the Agency. If the funds paid into this account give rise to interest or equivalent profits in accordance with the legislation of the country where the account is held, such profit or interest will be recovered by the Agency where it results from the pre-financing payment if this payment exceeds EUR 50,000.

A **pre-financing payment** of 70% will be transferred to the beneficiary within 45 days of:

- the date of reception of the payment request (for Grant Decisions),
  - the date when the last of the two parties signs the agreement (for Grant Agreements)
- and all the possible guarantees are received. Pre-financing is intended to provide the beneficiary with a float.

The Agency will establish the amount of the **final payment** to be made to the beneficiary on the basis of the final report. If the eligible costs actually incurred by the applicant during the action are lower than anticipated, the Agency will apply its rate of funding to the actual costs, and the beneficiary will, where applicable, be required to repay any excess amounts already transferred by the Agency under the pre-financing payment.

If the beneficiary is unable to pass the Financial Capacity test the following options are available:

1. Provide a bank guarantee for the amount of the pre-financing payment.

2. Request a Grant Decision/Agreement without pre-financing.
3. Request an interim payment corresponding to 50% of the value of the amount awarded, after at least 50% of the estimated development budget has been spent. This payment will take place after reception and approval by the Agency of an Interim Financial Report certified by an external approved auditor.

#### **9.2 Certificate on the financial statements and underlying accounts**

A certificate on the financial statements and underlying accounts, produced by an approved auditor, may be demanded by the authorising officer responsible in support of any payment on the basis of his assessment of risks.

The certificate shall be attached to the request for interim and/or final payment. The certificate shall certify, in accordance with a methodology approved by the contracting authority, that the costs declared by the beneficiary in the financial statements on which the request for payment is based are real, accurately recorded and eligible in accordance with the Grant Decision/Agreement.

#### **9.3 Guarantee**

The Agency may require any applicant which has been awarded a grant to provide a guarantee first, in order to limit the financial risks linked to the pre-financing payment.

The purpose of this guarantee is to make a bank or a financial institution stand as irrevocable collateral security for, or first-call guarantor of, the grant beneficiary's obligations.

This financial guarantee, in euro, shall be provided by an approved bank or financial institution established in one of the Member State of the European Union. When the beneficiary is established in a third country, the authorising officer responsible may agree that a bank or financial institution established in that third country may provide the guarantee if he considers that the bank or financial institution offers equivalent security and characteristics as those offered by a bank or financial institution established in a Member State.

The guarantee shall be released as the pre-financing is gradually cleared against interim payments or payments of balances to the beneficiary, in accordance with the conditions laid down in the decision/grant agreement.

#### **9.4 Double financing**

Subsidised actions may not benefit from any other European Union funding for the same activity.

#### **9.5 Eligible costs**

Eligible costs of the action are costs actually incurred by the beneficiary, which meet the following criteria:

- they are incurred during the duration of the action as specified in the Grant Decision/Agreement, with the exception of costs relating to final reports and certificates on the action's financial statements and underlying accounts;
- they are connected with the subject of the Grant Decision/Agreement and they are indicated in the estimated overall budget of the action;
- they are necessary for the implementation of the action which is the subject of the grant;
- they are identifiable and verifiable, in particular being recorded in the accounting records of the beneficiary and determined according to the applicable accounting standards of the

country, where the beneficiary is established and according to the usual cost-accounting practices of the beneficiary;

- they comply with the requirements of applicable tax and social legislation;
- they are reasonable, justified, and comply with the requirements of sound financial management, in particular regarding economy and efficiency.

The beneficiary's internal accounting and auditing procedures must permit direct reconciliation of the costs and revenue declared in respect of the action with the corresponding accounting statements and supporting documents.

#### Eligible direct costs:

The eligible direct costs for the action are those costs which, with due regard for the conditions of eligibility set out above, are identifiable as specific costs directly linked to the performance of the action and which can therefore be booked to it directly. In particular, the following direct costs are eligible, provided that they satisfy the criteria set out in the previous paragraph:

- acquisition of author rights;
- research;
- archive research;
- scriptwriting, including treatments, up to and including the final draft;
- storyboards;
- research and identification of key cast and crew;
- preparation of the provisional production budget;
- preparation of a financing plan;
- search for and identification of industry partners, co-producers and financiers;
- preparation of the production schedule up to delivery;
- initial marketing and sales plans (target markets and buyers, foreseen releases, presentation at festivals and markets, etc.);
- production of a video treatment or of a pilot.

#### Eligible indirect costs (administrative costs)

A flat-rate amount, not exceeding 7% of the eligible direct costs of the action, is eligible under indirect costs, representing the beneficiary's general administrative costs which can be regarded as chargeable to the action.

Indirect costs may not include costs entered under another budget heading. Indirect costs are not eligible where the beneficiary already receives an operating grant.

#### 9.6 Ineligible costs

The following costs shall not be considered eligible:

- return on capital;
- debt and debt service charges;
- provisions for losses or potential future liabilities;
- interest owed;
- doubtful debts;
- exchange losses;
- VAT, unless the beneficiary can show that it is unable to recover it according to the applicable national legislation;

- costs declared by the beneficiary and covered by another action or work programme receiving a European Union grant;
- excessive or reckless expenditure;
- the participation fee for training activities supported by MEDIA;
- production costs.

Contributions in kind (such as professional credits/industry credits in kind and deferred salaries) shall not constitute eligible costs.

#### 9.7 Sources of income

All financial contributions must be substantiated by clear statements duly dated and signed, specifying the amounts and the fact that they will be provided in cash.

The Financing Plan should show:

- The direct monetary contribution from the applicant (own resources);
- The financial contribution from other fund providers (public and/or private);
- The contribution applied for to the MEDIA Programme.

#### **10. SUB-CONTRACTING AND AWARD OF PROCUREMENT CONTRACT**

Where implementation of the action requires sub-contracting or the awarding of a procurement contract, the beneficiary and, where applicable, its partners must obtain competitive tenders from potential contractors and award the contract to the bid offering best value for money, observing the principles of transparency and equal treatment of potential contractors and taking care to avoid conflicts of interests.

#### **11. PUBLICITY**

All grants awarded in the course of a financial year must be published on the Internet site of the European Union institutions during the first half of the year following the closure of the budget year in respect of which they were awarded. The information may also be published using any other appropriate medium, including the Official Journal of the European Union.

With the agreement of the beneficiary, taking account of whether information is of such a nature as to jeopardise its security or prejudice its financial interests, the Agency will publish the following information:

- name and address of the beneficiary;
- subject of the grant;
- amount awarded and rate of funding.

Beneficiaries must clearly acknowledge the European Union's contribution in all publications or in conjunction with activities for which the grant is used.

Furthermore, beneficiaries are required to give prominence to the name and logo of the European Commission on all their publications, posters, programmes and other products realised under the co-financed action and to mention "With the support of the MEDIA Programme of the European Union". If this requirement is not fully complied with, the beneficiary's grant may be reduced.

**12. DATA PROTECTION**

All personal data (such as names, addresses, CVs, etc.) will be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the European Union institutions and bodies and on the free movement of such data.

Your replies to the questions in the application form are necessary in order to assess your grant application and they will be processed solely for that purpose by the department responsible for the European Union grant programme concerned. On request, you may be sent personal data and correct or complete them. For any question relating to these data, please contact the Agency. Beneficiaries may lodge a complaint against the processing of their personal data with the European Data Protection Supervisor at any time.

Applicants and, if they are legal entities, persons who have powers of representation, decision-making or control over them, are informed that, should they be in one of the situations mentioned in:

- the Commission Decision of 16.12.2008 on the Early Warning System (EWS) for the use of authorising officers of the Commission and the executive agencies (OJ L 344, 20.12.2008, p. 125), or
- the Commission Regulation of 17.12.2008 on the Central Exclusion Database – CED (OJ L 344, 20.12.2008, p. 12),

their personal details (name, given name if natural person, address, legal form and name and given name of the persons with powers of representation, decision-making or control, if legal person) may be registered in the EWS only or both in the EWS and CED, and communicated to the persons and entities listed in the above-mentioned Decision and Regulation, in relation to the award or the execution of a procurement contract or a grant agreement or decision.

**13. PROCEDURE FOR THE SUBMISSION OF PROPOSALS**

**13.1 Publication**

The Call for Proposals is being published in the Official Journal of the European Union and on the Internet site of the EACEA Agency at the following address: [www.ec.europa.eu/media](http://www.ec.europa.eu/media)

**13.2 Application form**

Grant applications must be drawn up in one of the official EU languages, using the form specifically designed for this purpose.

The official forms can be downloaded from the internet website mentioned in Section 13.1.

**13.3 Submission of the grant application**

An online application system has been set up. Proposals must be submitted by the deadline of **29/11/2010 and 11/04/2011, before 12:00 CES/CEST (Midday, Brussels time)** using the online application form, which is accessible on the website of the Executive Agency. In addition, the application package must be sent by registered mail or private courier by the deadline (the date as postmark or mail service stamp will be taken as proof of timely sending). The application package has to include the paper copy of the online application form as well as the relevant mandatory annexes. Application packages are not returned at the end of the selection procedure.

Applications which do not include all the stipulated documents in the required format and which are not submitted before the deadline will not be considered.

The application package must be sent by registered mail or private courier posted no later than the closing dates of **29/11/2010 and 11/04/2011**, to the following address:

Education, Audiovisual and Culture Executive Agency (EACEA)  
Constantin Daskalakis  
BOUR 329  
Avenue du Bourget, 1  
B-1140 Brussels  
Belgium

ENVELOPES SHOULD BE CLEARLY MARKED: "MEDIA 2007 - Development- Call for Proposals N° 25/2010 Single Project (animation, drama or creative documentary)"

Applications sent by fax or e-mail will not be accepted. The Agency cannot under any circumstances be held responsible for the shortcomings of courier services, and it is up to the applicant alone to ensure that the application package is sent off in good time. In the event that there are any changes in the delivery of an application (postal, fiscal or other) the Agency cannot be held liable for them and will refuse to accept such packages.

No changes to the dossier can be made after the application has been submitted. However, if there is a need to clarify certain aspects, the Agency may contact the applicant for this purpose.

Applicants will be informed of the receipt of their proposal within 15 working days.

Only applications that fulfil the eligibility criteria will be considered for a grant. If an application is deemed ineligible, a letter indicating the reasons will be sent to the applicant.

Selected proposals will be subjected to a financial analysis, in connection with which the Agency may ask the persons responsible for the proposed actions to provide additional information and, if appropriate, guarantees.

**13.4 Rules applicable**

Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities. (OJ L 248, 16.9.2002, p. 1, as last amended).

Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities. (OJ L 357, 31.12.2002, p. 1, as last amended).

Decision N° 1718/2006/EC of the European Parliament and of the Council of 15 November 2006 concerning the implementation of a support programme for the European audiovisual sector (MEDIA 2007).



### 13.5 Contacts

Additional information is available at MEDIA Desks and Antennae as per the list included on the following website:  
[http://ec.europa.eu/culture/media/programme/overview/who/desks/index\\_en.htm](http://ec.europa.eu/culture/media/programme/overview/who/desks/index_en.htm)

### **MEDIA European Talent Prize**

#### **1. OBJECTIVES AND PRIORITIES**

The MEDIA European Talent Prize is awarded to the best project chosen from the Single Projects selected during the first deadline of the EACEA Call for Proposals 25/2010

It aims to reward a production company and a screenwriter that has put forward a high quality project with a strong European potential. The work can be an animation, a creative documentary or a drama and must be intended for theatrical release.

#### **2. CALENDAR**

The winner is the project in one of the abovementioned eligible categories that has obtained the highest amount of points in the Single Projects selection procedure (EACEA Call for Proposals 25/2010 1<sup>st</sup> deadline).

The candidates will be informed of the results of the competition at the same time as the results of the 1<sup>st</sup> deadline, that is, by the end of April 2011.

#### **3. NATURE OF THE PRIZE**

The MEDIA European Talent Prize will be awarded during the Cannes International Film Festival 2011.

The author and producer of the project will be invited by the Cannes Festival and will be accompanied at the market in order to make the awarded project known and to look for partners.

#### **4. ELIGIBILITY CRITERIA**

The project must be eligible for Single Project support.

The work must be an animation, a creative documentary or a drama intended for theatrical release.

#### **5. AWARD CRITERIA**

The winning project will be the one that receives the highest total points within the Single Project selection process (1st deadline).



## **APPENDIX 11**

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# general conditions

## 1. ABOUT NORDISK FILM & TV FOND ([www.nordiskfilmogtvfond.com](http://www.nordiskfilmogtvfond.com))

### 1.1 PURPOSE

Nordisk Film & TV Fond (hereafter called "the Fund") promotes Nordic film and TV productions of high quality by providing support for top financing for project development and production of feature film, TV fiction / series and creative documentaries.

The Fund furthermore promotes as top funder distribution and dubbing of Nordic films inside the Nordic countries and Film Cultural Initiatives of Nordic importance.

### 1.2 STATUS AND OPERATIONS

The Fund is a foundation, subject to the legal status and provisions in force for foundations in Norway.

The operations of the Fund shall be carried out according to the latest Statutes and Agreement in force between the Fund and the Partners of the Fund.

### 1.3 THE PARTNERS

The Fund comprises 17 partners (hereafter called "the Partners of the Fund"):

The Nordic Council of Ministers

Nordic Film Funds / Film Institutes:

The Danish Film Institute, The Finnish Film Foundation, The Icelandic Film Centre, The Norwegian Film Institute and The Swedish Film Institute.

Nordic TV Broadcasters (hereafter called "the TV Partners of the Fund"):

DR and TV2 Denmark, YLE, Sanoma Entertainment / Nelonen Media, MTV3 Finland, RUV and Stöð 2 Iceland, NRK and TV2 Norway, SVT, TV4 and Kanal 5 Sweden.

### 1.4 BOARD OF DIRECTORS

The Nordic Council of Minister appoints a Board of Directors which bears final responsibility for the operations of the Fund.

A Decision made by the Board of Directors is irrevocable.

## 2. CONDITIONS AND APPLICATION EVALUATION

### 2.1 CONDITIONS FOR GRANTING OF SUPPORT FOR PROJECT DEVELOPMENT & PRODUCTION

- The project must be suited for cinema exhibition, TV distribution or for other type of distribution.
- The project must be considered by the Fund to have a sufficient audience potential in the Nordic countries.
- The Fund does not contribute to the funding of a project that has been pre-sold to or that is co-produced by a Nordic TV broadcaster that is not one of the TV Partners of the Fund.

### 2.2 APPLICATION

Applications must be submitted via [www.nordiskfilmogtvfond.com](http://www.nordiskfilmogtvfond.com).

- Application with annexes shall be written in a Scandinavian language or in English.
- Applications are evaluated on a continuous basis.
- Processing of applications normally takes 4 to 6 weeks.

### 2.3 EVALUATION OF APPLICATION

- The Fund will make a comprehensive evaluation of the project, on the basis of artistic, content-related, production- and distribution-related criteria, as well as those obligations that result from the latest Statutes and the Agreement in force between the Fund and the Partners of the Fund.
- The Fund poses no conditions regarding a common Nordic theme, joint Nordic co-production or inter-Nordic combination of staff or actors.
- The Fund will in particular prioritise projects that have children and young people as their target groups.

### 2.4 DECISION

- The Chief Executive Officer of the Fund is responsible to the Board of Directors for decisions made regarding the granting or the refusal of support.

### 2.5 RIGHTS OF THE FUND

- The Fund retains the right to mention all projects that have received support in all printed matter and on the Internet web site of the Fund.
- The Fund retains the right to exhibit stills, trailers, TV spots as well as excerpts from the film (maximum duration 5 minutes) and other visual material on the web site of the Fund or in connection with events initiated by the Fund, where the Fund participates etc.
- The producer remains responsible that the Fund's use of all above-mentioned material has been cleared with the appropriate rights holders.

### 3. TYPES OF SUPPORT AND CRITERIA FOR SUPPORT

The Fund provides support in the form of top financing under the following conditions:

#### 3.1 SUPPORT FOR PROJECT DEVELOPMENT

- National base funding must be confirmed. National base funding is defined as funding provided by sources in the main producer's home country, e.g. national film institutes / funds, regional film funds, the Fund's TV Partners and distributors.

- Support will primarily be granted for feature films and TV fiction / series, to a lesser degree for documentaries.

- If a project has applied for but not received support for project development, it is still possible to apply for support for production.

MAY BE APPLIED FOR BY NORDIC PRODUCTION COMPANIES

#### 3.2 SUPPORT FOR PRODUCTION

FEATURE FILMS

- National base funding must be confirmed. National base funding is defined as funding provided by sources in the main producer's home country, e.g. national film institutes / funds, regional film funds, the Fund's TV Partners and distributors.

- Distribution guarantee for cinema exhibition must be signed with a minimum of 2 Nordic countries and distribution contract must be signed with a minimum of 1 of the TV Partners of the Fund.

- Alternatively, a distribution guarantee for cinema exhibition in a minimum of 1 Nordic country and a distribution contract with a minimum of 2 of the TV Partners of the Fund must be signed.

TV FICTION / SERIES

- National base funding must be confirmed. National base funding is defined as funding provided by sources in the main producer's home country, e.g. national film institutes / funds, regional film funds, the Fund's TV Partners and distributors.

- Distribution contracts must be signed with a minimum of 2 of the TV Partners of the Fund (but only with 1 if a TV company is itself the producer).

DOCUMENTARIES

- National base funding must be confirmed. National base funding is defined as funding provided by sources in the main producer's home country, e.g. national film institutes / funds, regional film funds, the Fund's TV Partners and distributors.

- Distribution contracts must be signed with a minimum of 2 of the TV Partners of the Fund. Alternatively, a distribution guarantee for cinema exhibition in a minimum of 2 Nordic countries and a distribution contract with a minimum of 1 of the TV Partners of the Fund must be signed.

MAY BE APPLIED FOR BY NORDIC PRODUCTION COMPANIES

#### 3.3 SUPPORT FOR CINEMA DISTRIBUTION

- A film applying for distribution support must have been well received by its respective national audience, and must have a satisfactory audience potential in one or more Nordic countries.

- Support may be granted independently of whether the film previously has been granted production support from the Fund.

The Fund may, under special circumstances, provide support for other types of distribution.

MAY BE APPLIED FOR BY NORDIC DISTRIBUTION COMPANIES BASED IN THE COUNTRY WHERE THE FILM WILL BE RELEASED

#### 3.4 SUPPORT FOR DUBBING

Support is granted for dubbing to another Nordic language.

A film applying for support for dubbing shall have been well received by its respective national audience, and must have a satisfactory distribution and audience potential in one or more Nordic countries.

- Support may be granted independently of whether the film previously has been granted production support from the Fund.

- Support is normally only granted to films for children and young people.

MAY BE APPLIED FOR BY NORDIC PRODUCTION COMPANIES OR DISTRIBUTION COMPANIES BASED IN THE COUNTRY WHERE THE FILM WILL BE RELEASED

#### 3.5 SUPPORT FOR FILM CULTURAL INITIATIVES

Support is granted for Film Cultural Initiatives in the form of workshops, seminars or festival programmes that may strengthen the competence of the joint Nordic film and TV community.

MAY BE APPLIED FOR BY THE ORGANISER OF THE INITIATIVE

#### 4. REIMBURSEMENT

The Fund supports project development and production by way of loans that are repayable according to the following rules:

The Fund is entitled to a share (Reimbursement Percentage) of the producer's World Wide Receipts.

Reimbursement starts when the producer's World Wide Receipts has reached an amount defined beforehand (Break-Even Point).

##### 4.1 WORLD WIDE RECEIPTS

The total of the producer's gross receipts from throughout the world and from all media.

According to customary business practice minimum guarantee and P&A are not counted as part of the producer's World Wide Receipts.

Royalties may not be deducted from the producer's World Wide Receipts.

##### 4.2 REIMBURSEMENT PERCENTAGE

The Fund's amount of support in per cent of the Nordic funding, minus In Advance Approved Own Financing.

##### 4.3 BREAK-EVEN POINT

The producer's In Advance Approved Own Financing plus a surcharge of 35 per cent, plus Nordic TV investment.

##### 4.4 PRODUCER'S IN ADVANCE APPROVED OWN FINANCING

The amount of the In Advance Approved Own Financing for each project is determined by the Fund.

The Fund may i.a. approve the following items as part of the Producer's In Advance Approved Own Financing:

- Cash-in-hand
- Labour deferrals
- Producer's deferrals on own contribution
- Co-producer and distributor deferrals
- Supplier deferrals

Own financing shall be risk participation.

The Fund does i.a. *not* approve the following items as part of the Producer's In Advance Approved Own Financing:

- Distributor's minimum guarantee and P&A
- TV investment or pre-sale of distribution rights to a Nordic TV broadcasting company
- Support from regional film funds
- Non-Nordic funding

Application for change in the amount of In Advance Approved Own Financing shall be approved by the Fund at the latest before the national release of the film.

The Fund is, upon request, entitled to documentation of all receipts and costs connected to the production of the film and has the right to audit the producer's accounts as part of the control.

##### 4.5 REPORTING AND REIMBURSEMENT

The Fund may, as a maximum, be reimbursed the amount granted as project development support and production support.

The Fund's claim for reimbursement is no longer applicable to receipts derived after 5 years from the film's national theatrical release. For TV documentaries and TV fiction / series this limit applies to 5 years from the film's first national TV distribution.

Annual income reports must be submitted to the Fund, the first one calculated one year after the national cinema release of the project and the last one calculated five years after the national cinema release of the project.

The reports must be accompanied by copies of relevant sub-annexes from distributor(s), sales agent etc or be properly audited by an accountant or drawn up by a collection agency approved by the Fund.

The reports must be submitted by the latest three months after the calculation date to:

Nordisk Film & TV Fond  
c/o ECA AVS  
Hammerisgade 6,4  
DK-1267 Copenhagen K  
Denmark

##### 5. BREACH OF CONTRACT

If circumstances that are relevant to the commitment of support, or to the Contract, are significantly changed, or if the Producer significantly does not fulfil his / her obligations in accordance with the Guidelines and / or the Contract, the Fund has the right to terminate the Contract with immediate effect. In such cases, the Fund has the right to demand reimbursement of any contribution paid.

# specific conditions

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## 6. SUPPORT FOR PROJECT DEVELOPMENT

MAY BE APPLIED FOR BY NORDIC PRODUCTION COMPANIES

### 6.1 CONDITIONS FOR GRANTING OF SUPPORT

Nordisk Film & TV Fond provides support for project development in the form of top financing, primarily for feature films and TV fiction / series, and under the following conditions:

- National base funding for the project development must be confirmed.

### 6.2 APPLICATION

Applications must normally be submitted before project development starts.

The following items shall be submitted via [www.nordiskfilmogtvfond.com](http://www.nordiskfilmogtvfond.com):

- Synopsis (maximum half page A4)
- Feature Film, TV Fiction / Series: Manuscript
- Documentary: Treatment
- Animation: Storyline / drawings / character descriptions
- Project description and plan for execution of development work
- CV for creative staff
- Budget for the project development. Only expenses directly associated with the forthcoming development of the project may be included in the budget.
- Financing plan showing confirmed financing. Amounts shall be given in national and Norwegian currency, and shall include conversion rate
- Documentation of confirmed financing
- Documentation of specified own financing

The following must also be sent by post:

- Feature Film, TV Fiction / Series: Manuscript - 2 copies
- Documentary: Treatment - 1 copy
- Animation: Storyline / drawings / character descriptions - 2 copies
- If director is confirmed, 2 of his / hers latest films on DVD
- Visual material – 2 copies (plot, trailer etc).

### 6.3 COMMITMENT

The producer will receive a Letter of Commitment from the Fund.

### 6.4 DRAFTING OF CONTRACT

The Fund will draft a Contract for a project that has been granted support.

After the Contract has been signed, the production company may not make substantial changes in economic or right-related conditions, unless these have been presented in writing to and accepted by the Fund.

### 6.5 PAYMENT OF INSTALMENTS

Conditions for the payment of the Fund's support will be determined for each project. Normally the Contract will stipulate payment in 2 instalments.

guidelines [uk] / specific conditions



guidelines [uk] / specific conditions



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Material associated with the payment of instalments is submitted via [www.nordiskfilmogtvfond.com](http://www.nordiskfilmogtvfond.com)

The first instalment will be paid when the national main financier has paid its first instalment.

Before payment of the first instalment the following items shall be submitted:

- Signed Contract
- Invoice

Before payment of the last instalment the following items shall be submitted:

- Report of expenditure showing final spend compared with budget
- Status report for the project and the development work
- Deliverable material in accordance with the Contract
- Invoice

### 6.6 CREDITING AND ACCOUNTS

On all material from the project development and other information material it shall be evident that the film has been developed with the support of Nordisk Film & TV Fond. Crediting shall be approved by the Fund and shall appear on equal terms with the main financier.

The Fund is, upon request, entitled to documentation of all costs connected to the development of the film and has the right to audit the producer's accounts as part of the control.

### 6.7 REIMBURSEMENT

If the Fund provides support for the production of a project that has previously been granted support for project development, this support shall be included in the Fund's total contribution and be subject to reimbursement in accordance with the Contract for production support.

If the project is produced without the Fund contributes to support the production itself, the support for project development shall be reimbursed in accordance with the rules on reimbursement, as given in General Conditions, item 4.

If the project is not realised, demand for reimbursement is not applicable.



## 7. SUPPORT FOR THE PRODUCTION OF FEATURE FILMS

MAY BE APPLIED FOR BY NORDIC PRODUCTION COMPANIES

### 7.1 CONDITIONS FOR GRANTING OF SUPPORT

Nordisk Film & TV Fond will provide support for the production of feature films in the form of top financing under the following conditions:

- National base funding must be confirmed.
- Distribution guarantee must be signed for cinema exhibition for a minimum of 2 Nordic countries and distribution contract must be signed with a minimum of 1 of the TV Partners of the Fund.
- Alternatively, a distribution guarantee for cinema exhibition in a minimum of 1 Nordic country and a distribution contract with a minimum of 2 of the TV Partners of the Fund must be signed.
- When a TV company itself produces a feature film, distribution contracts must be signed with minimum 1 of the other TV Partners of the Fund and distribution guarantee must be signed for cinema exhibition for a minimum of 2 Nordic countries.

### 7.2 APPLICATION

Applications must normally be submitted before production starts.

The following items shall be submitted via [www.nordiskfilmogtvfond.com](http://www.nordiskfilmogtvfond.com):

- Synopsis (maximum half page A4)
- Manuscript
- Animation: Storyline / drawings / character descriptions
- Producer's statement
- Director's statement
- CV for creative staff
- Preliminary time schedule
- Budget
- Financing plan showing confirmed financing. Amounts shall be given in national and Norwegian currency, and shall include conversion rate
- Documentation of confirmed financing
- Documentation of specified own financing
- Distribution guarantee for cinema exhibition in a minimum of 2 Nordic countries and a distribution contract or LOC for TV with minimum 1 of the TV Partners of the Fund
- Alternatively, a distribution guarantee for cinema exhibition in a minimum of 1 Nordic country and distribution contracts or LOC for TV with a minimum of 2 of the TV Partners of the Fund
- Distribution plan for cinema, including admissions estimate, in the country of origin of the film

The following must also be sent by post:

- Manuscript – 3 copies
- Animation: Storyline / drawings / character descriptions – 3 copies
- DVD featuring the director's last 2 films
- Visual material – 2 copies (pilot, trailer etc).

### 7.3 COMMITMENT

The producer will receive a Letter of Commitment from the Fund in which a deadline is specified for fulfilment of the formal requirements (see item 7.4). The deadline will be determined in relation to the time plan of the project and will normally be before the first day of principal photography, if the deadline is not respected, the Fund will consider itself relieved of all commitments, and the support granted will automatically be withdrawn. It is the responsibility of the producer to make sure the deadline is respected.

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### 7.4 DRAFTING OF CONTRACT

The Fund will draft a Contract for a project that is granted support. The following items shall be submitted via [www.nordiskfilmogtvfond.com](http://www.nordiskfilmogtvfond.com):

Only new documents can be uploaded, fields cannot be edited and old documents cannot be deleted. All new information must be uploaded as pdf files.

Up-dated production information:

- Length of the film
- Shooting format of the film
- Screening format of the film
- Cast list (main roles)
- Staff list (key functions)
- Production plan with dates for start and completion of principal photography
- Post-production plan with dates for editing, sound work, sound mix, lab work, delivery print
- Expected national release date for cinema and TV

Up-dated financial information:

- Detailed budget
- Financing plan
- Confirmation of all financing:

- In the case of financial participation by a TV company the relationship between investment and payment for distribution rights shall be specified
- In the case of financial participation by distributor and / or co-producer the relationship between investment and minimum guarantee shall be specified
- In the case of financial participation by a national film institute / film fund a copy of the final, signed contract shall be submitted

Up-dated distribution information:

- Distribution contract that guarantees cinema exhibition in at least 2 Nordic countries and a distribution contract with minimum 1 of the TV Partners of the Fund
- Alternatively, a distribution contract that guarantees cinema exhibition in at least 1 Nordic country and distribution contracts with a minimum of 2 of the TV Partners of the Fund
- Distribution plan for cinema with defined target group and description of how this will be reached, as well as admissions estimate in the country of origin of the film
- In the case of a TV company producing a feature film, distribution contract that guarantees cinema exhibition for a minimum of 2 Nordic countries, and distribution contract from minimum 1 of the other TV Partners of the Fund shall be provided
- Stills from the film, at least 1 of the director. To be supplied digitally, minimum 300 dpi

The Contract will only be drafted upon reception of all final documentation.

After the Contract has been signed, the production company may not make substantial changes to the manuscript and / or to artistic, production-related, economic, technical, marketing- or rights-related conditions, unless these have been presented in writing to and accepted by the Fund.

### 7.5 PAYMENT OF INSTALLMENTS

Conditions for the payment of the Fund's support will be determined individually for each project. Normally the Contract will stipulate payment in 4 instalments.

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Material associated with the payment of instalments is submitted via [www.nordiskfilmogtvfond.com](http://www.nordiskfilmogtvfond.com).

The first instalment will be paid when the national main financier has paid its first instalment.

Before payment of the first instalment the following items shall be submitted:

- Signed Contract
- Invoice

Before payment of the subsequent instalments the following items shall be submitted:

- Report of expenditure showing spend compared with budget, as well as final cost estimate
- Written report on the status of the project
- Invoice

Before payment of the final instalment the following shall be submitted:

- Certified accounts showing final spend compared with budget
- All other deliverable material (see item 7.6)
- Invoice

## 7.6 CREDITING AND ACCOUNTS

From the opening or dosing credits of the film and other information material it shall be evident that the film has been produced with the support of Nordisk Film & TV Fond. Crediting shall be approved by the Fund and shall appear on equal terms with the main financier.

The Fund is, upon request, entitled to documentation of all costs connected to the production of the film and has the right to audit the producer's accounts as part of the control.

Deliverable material:

- A copy of the film (DVD) with Scandinavian or English subtitles, including trailer / TV spots
- Poster
- Stills, minimum 5, delivered digitally, minimum 300 dpi
- A representative selection of reviews
- Record of festival participation and any prizes won
- Record of international sales

## 7.7 REIMBURSEMENT

For rules on reimbursement, see General Conditions, item 4.

## 8. SUPPORT FOR THE PRODUCTION OF TV FICTION / SERIES MAY BE APPLIED FOR BY NORDIC PRODUCTION COMPANIES

### 8.1 CONDITIONS FOR GRANTING OF SUPPORT

Nordisk Film & TV Fond will provide support for the production of TV fiction / series in the form of top financing under the following conditions:

- National base funding must be confirmed.
- Distribution contracts must be signed with a minimum of 2 of the TV Partners of the Fund (but only with 1 if a TV company is itself the producer).

### 8.2 APPLICATION

Applications must normally be submitted before production starts.

The following items shall be submitted via [nordiskfilmogtvfond.com](http://nordiskfilmogtvfond.com):

- Synopsis (maximum half page A4)
- Manuscript
- Animation: Storyline / drawings / character descriptions
- Producer's statement
- Director's statement
- CV for creative staff
- Preliminary time schedule
- Budget
- Financing plan showing confirmed financing. Amounts shall be given in national and Norwegian currency, and shall include conversion rate
- Documentation of confirmed financing
- Documentation of specified own financing
- Distribution contracts or LOC for TV with minimum 2 of the TV Partners of the Fund
- Distribution plan for TV, including spectator estimate, in the country of origin of the films / series

The following must also be sent by post:

- Manuscript – 3 copies
- Animation: Storyline / drawings / character descriptions – 3 copies
- DVD featuring the director's last 2 films
- Visual material – 2 copies (pilot, trailer etc).

### 8.3 COMMITMENT

The producer will receive a Letter of Commitment from the Fund in which a deadline is specified for fulfilment of the formal requirements (see item 8.4). The deadline will be determined in relation to the time plan of the project and will normally be before the first day of principal photography. If the deadline is not respected, the Fund will consider itself relieved of all commitments, and the support granted will automatically be withdrawn. It is the responsibility of the producer to make sure the deadline is respected.

#### 8.4 DRAFTING OF CONTRACT

The Fund will draft a Contract for a project that is granted support. The following items shall be via [www.nordiskfilmogtvfond.com](http://www.nordiskfilmogtvfond.com):

Only new documents can be uploaded, fields cannot be edited and old documents cannot be deleted. All new information must be uploaded as pdf files.

##### Up-dated production information:

- Length of the film / series
- Shooting format of the film / series
- Screening format of the film / series
- Cast list (main roles)
- Staff list (key functions)
- Production plan with dates for start and completion of principal photography
- Post-production plan with dates for editing, sound work, sound mix, lab work, master
- Expected national release for TV

##### Up-dated financial information:

- Detailed budget
- Financing plan
- Confirmation of all financing:
  - ° In the case of financial participation by a TV company the relationship between investment and payment for distribution rights shall be specified
  - ° In the case of financial participation by distributor and / or co-producer the relationship between investment and minimum guarantee shall be specified
  - ° In the case of financial participation by a national film institute / film fund a copy of the final, signed contract shall be submitted

##### Up-dated distribution information:

- In the case of an independent production company producing TV fiction / series, distribution contracts shall be signed with minimum 2 of the TV Partners of the Fund
- In the case of a TV company itself producing TV fiction / series, distribution contract shall be signed with minimum 1 of the TV Partners of the Fund
- Distribution plan for TV with defined target group and description of how this will be reached, as well as spectator estimate in the country of origin of the film / series
- Stills from the film, at least 1 of the chief director. To be supplied digitally, minimum 300 dpi

The Contract will only be drafted upon reception of all final documentation.

After the Contract has been signed, the production company may not make substantial changes to the manuscript and / or to artistic, production-related, economic, technical, marketing- or rights-related conditions, unless these have been presented in writing to and accepted by the Fund.

#### 8.5 PAYMENT OF INSTALMENTS

Conditions for the payment of the Fund's support will be determined individually for each project. Normally the Contract will stipulate payment in 4 instalments.

Material associated with the payment of instalments is submitted via [www.nordiskfilmogtvfond.com](http://www.nordiskfilmogtvfond.com).

The first instalment will be paid when the national main financier has paid its first instalment.

Before payment of the first instalment the following items shall be submitted:

- Signed Contract
- Invoice

Before payment of the subsequent instalments the following items shall be submitted:

- Report of expenditure showing spend compared with budget, as well as final cost estimate
- Written report on the status of the project
- Invoice

Before payment of the final instalment the following shall be submitted:

- Certified accounts showing final spend compared with budget
- All other deliverable material (see item 8.6)
- Invoice

#### 8.6 CREDITING AND ACCOUNTS

From the opening or closing credits of the film / series and other information material it shall be evident that the film / series has been produced with the support of Nordisk Film & TV Fond. Crediting shall be approved by the Fund.

The Fund is, upon request, entitled to documentation of all costs connected to the production of the film / series and has the right to audit the producer's accounts as part of the control.

##### Deliverable material:

- A copy of the film / series (DVD) with Scandinavian or English subtitles, including trailer / TV spots
- Poster (if available)
- Stills, minimum 5, delivered digitally, minimum 300 dpi
- A representative selection of reviews
- Record of festival participation and any prizes won
- Record of international sales

#### 8.7 REIMBURSEMENT

For rules on reimbursement, see General Conditions, item 4.

## 9. SUPPORT FOR THE PRODUCTION OF DOCUMENTARIES

MAY BE APPLIED FOR BY NORDIC PRODUCTION COMPANIES

### 9.1 CONDITIONS FOR GRANTING OF SUPPORT

Nordisk Film & TV Fond will provide support for the production of documentaries in the form of top financing under the following conditions:

- National base funding must be confirmed.
- Distribution contracts must be signed with a minimum of 2 of the TV Partners of the Fund. Alternatively, a distribution guarantee for cinema exhibition in a minimum of 2 Nordic countries and a distribution contract with a minimum of 1 of the TV Partners of the Fund must be signed.

### 9.2 APPLICATION

Applications must normally be submitted before production starts.

The following items shall be submitted via [www.nordiskfilmogtvfond.com](http://www.nordiskfilmogtvfond.com):

- Synopsis (maximum half page A4)
- Treatment / manuscript (3 copies)
- Producer's statement
- Director's statement
- CV for creative staff
- Preliminary time schedule
- Budget
- Financing plan showing confirmed financing. Amounts shall be given in national and Norwegian currency, and shall include conversion rate
- Documentation of confirmed financing
- Documentation of specified own financing
- Distribution contract or LOC for TV with minimum 2 of the TV Partners of the Fund
- Alternatively, a distribution guarantee for cinema exhibition in a minimum of 2 Nordic countries and distribution contract or LOC for TV with minimum 1 of the TV Partners of the Fund
- Distribution plan for TV, including spectator estimate in the country of origin of the film, or (when applicable) preliminary distribution plan for cinema with admissions estimate in the country of origin of the film

The following must also be sent by post:

- Treatment / Manuscript – 1 copy
- DVD featuring the director's last 2 films
- Visual material – 1 copy (pilot, trailer etc).

### 9.3 COMMITMENT

The producer will receive a Letter of Commitment from the Fund in which a deadline is specified for fulfilment of the formal requirements (see item 9.4). The deadline will be determined in relation to the production plan of the project and will normally be before the first day of principal photography. If the deadline is not respected, the Fund will consider itself relieved of all commitments, and the support granted will automatically be withdrawn. It is the responsibility of the producer to make sure the deadline is respected.

### 9.4 DRAFTING OF CONTRACT

The Fund will draft a Contract for a project that has been granted support.

The following items shall be sent via [www.nordiskfilmogtvfond.com](http://www.nordiskfilmogtvfond.com):

Only new documents can be uploaded, fields cannot be edited and old documents cannot be deleted. All new information must be uploaded as pdf files.

Up-dated treatment / manuscript

Up-dated production information:

- Length(s) of the film
- Shooting format of the film
- Screening format(s) of the film
- Staff list (key functions)
- Production plan with dates for start and completion of principal photography
- Post-production plan with dates for editing, sound work, lab work, master and (when applicable) delivery print
- Expected national release for TV and (when applicable) for cinema

Up-dated financial information:

- Detailed budget
- Financing plan
- Confirmation of all financing:
  - ° In the case of financial participation by a TV company the relationship between investment and payment for distribution rights shall be specified
  - ° In the case of financial participation by distributor and / or co-producer the relationship between investment and minimum guarantee shall be specified
  - ° In the case of financial participation by a national film institute / film fund a copy of the final, signed contract shall be submitted

Up-dated distribution information:

- Distribution contracts with minimum 2 of the TV Partners of the Fund
- Alternatively, distribution contract that guarantee cinema exhibition in a minimum of 2 Nordic countries and distribution contract with minimum 1 of the TV Partners of the Fund
- Distribution plan for cinema with defined target group and description of how this will be reached, as well as admissions estimate in the country of origin of the film
- Stills from the film, at least 1 of the director. To be supplied digitally, minimum 300 dpi

The Contract will only be drafted upon reception of all final documentation.

After the Contract has been signed, the production company may not make substantial changes to the manuscript and / or to artistic, production-related, economic, technical, marketing- or rights-related conditions, unless these have been presented in writing to and accepted by the Fund.

### 9.5 PAYMENT OF INSTALLMENTS

Conditions for the payment of the Fund's support will be determined individually for each project. Normally the Contract will stipulate payment in 4 instalments.

Material associated with the payment of instalments is submitted via [www.nordiskfilmogtvfond.com](http://www.nordiskfilmogtvfond.com).

The first instalment will be paid when the national main financier has paid its first instalment.

Before payment of the first instalment the following items shall be submitted:

- Signed Contract
- Invoice

Before payment of the subsequent instalments the following items shall be submitted:

- Report of expenditure showing spend compared with budget, as well as final cost estimate
- Written report on the status of the project
- Invoice

Before payment of the final instalment the following shall be submitted:

- Certified accounts showing final spend compared with budget
- All other deliverable material (see item 9.6)
- Invoice

## 9.6 CREDITING AND ACCOUNTS

From the opening or dosing credits of the film and other information material it shall be evident that the film has been produced with the support of Nordisk Film & TV Fond. Crediting shall be approved by the Fund and shall appear on equal terms with the main financier.

The Fund is, upon request, entitled to documentation of all costs connected to the production of the film and has the right to audit the producer's accounts as part of the control.

Deliverable material:

- A copy of the film (DVD) with Scandinavian or English subtitles, including trailer / TV spots
- Poster (if applicable)
- Stills, minimum 3, delivered digitally, minimum 300 dpi
- A representative selection of reviews
- Record of festival participation and any prizes won
- Record of international sales

## 9.7 REIMBURSEMENT

For rules on reimbursement, see General Conditions, item 4.

## 10. SUPPORT FOR CINEMA DISTRIBUTION

MAY BE APPLIED FOR BY NORDIC DISTRIBUTION COMPANIES IN THE COUNTRIES WHERE THE FILM WILL BE RELEASED

### 10.1 CONDITIONS FOR GRANTING OF SUPPORT

The Nordic Film & TV Fund provides funding for top financing of cinema distribution under the following conditions:

- A film applying for support to cover distribution costs must have been well received by its respective national audience, and must have a satisfactory audience potential in one or more Nordic countries.
- Support may be granted independently of whether the film previously has been granted production support from the Fund.
- Support is provided as a cash contribution and is thus not subject to reimbursement.

The Fund may, under special circumstances, provide support for other types of distribution.

### 10.2 APPLICATION

Applications must normally be submitted at the latest four weeks before the première.

The following items shall be submitted via [nordiskfilmogtvfond.com](http://nordiskfilmogtvfond.com):

- Synopsis (maximum half page A4)
- A copy of the film (DVD) in the original language, if applicable with English or Scandinavian subtitles
- Distribution budget
- Financing plan. Amounts shall be given in national and Norwegian currency, and shall include conversion rate
  - \* Other applicable support (excluding automatic Media Programmes support) shall be detailed in the financing plan
- Documentation of the distributor's specified own financing
- Distribution plan with defined target group and description of how this will be reached, as well as admissions estimate in the country where the film will be released

### 10.3 COMMITMENT

The Distributor will receive a Letter of Commitment from the Fund.

### 10.4 DRAFTING OF CONTRACT

The Fund will draft a Contract for a project that has been granted support.

### 10.5 PAYMENT OF INSTALMENTS

Payment of the Fund's support will only take place when the distribution has been fully financed. The amount of each instalment will be determined individually for each project. Normally the Contract will stipulate payment in 2 instalments.

Material associated with the payment of instalments is submitted via [www.nordiskfilmogtvfond.com](http://www.nordiskfilmogtvfond.com).

Before payment of the first instalment the following items shall be submitted:

- Signed contract
- Invoice

Before payment of the final instalment the following items shall be submitted:

- Accounts showing final spend compared with distribution budget
- Accounts showing total income
- The Fund's evaluation report regarding the reception of the film in relation to expected results via [www.nordiskfilmogtvfond.com](http://www.nordiskfilmogtvfond.com)
- Invoice

### 10.6 CREDITS AND ACCOUNTS

From the advertising material it shall be evident that the film has been distributed with the support of Nordisk Film & TV Fond. Crediting shall be approved by the Fund.

The Fund is, upon request, entitled to documentation of all receipts and costs connected with the distribution of the film and has the right to audit the distributor's accounts as part of the control.

## 11. SUPPORT FOR DUBBING

MAY BE APPLIED FOR BY NORDIC PRODUCTION COMPANIES OR BY DISTRIBUTION COMPANIES BASED IN THE COUNTRY WHERE THE FILM WILL BE RELEASED

Support is granted for the dubbing of a Nordic film to another Nordic language.

### 11.1 CONDITIONS FOR GRANTING OF SUPPORT

The Nordic Film & TV Fund provides funding for top financing of dubbing under the following conditions:

- A Film applying for support for dubbing must have been well received by its respective national audience, and must have a satisfactory distribution and audience potential in one or more Nordic countries.
  - Support may be granted independently of whether the film previously has been granted production support from the Fund.
  - Support for dubbing is normally only granted to films for children and young people.
- Support is provided as a cash contribution and is thus not subject to reimbursement.

### 11.2 APPLICATION

Applications must normally be submitted before dubbing starts.

The following items shall be submitted via [www.nordiskfilmogtvfond.com](http://www.nordiskfilmogtvfond.com):

- Synopsis (maximum half page A4)
- A copy of the film (DVD) if applicable with English or Scandinavian subtitles
- Budget for the dubbing
- Financing plan showing confirmed financing. Amounts shall be given in national and Norwegian currency, and shall include conversion rate
- Documentation of specified own financing
- Distribution plan with defined target group and description of how this will be reached, as well as admissions estimate in the country where the film will be released

### 11.3 COMMITMENT

The producer or distributor will receive a Letter of Commitment from the Fund.

### 11.4 DRAFTING OF CONTRACT

The Fund will draft a Contract for a project that has been granted support.

### 11.5 PAYMENT OF INSTALMENTS

Payment of the Fund's support will only take place when the dubbing has been fully financed. The amount of each instalment will be determined individually for each project. Normally the Contract will stipulate payment in 2 instalments.

Material associated with the payment of instalments is submitted via [www.nordiskfilmogtvfond.com](http://www.nordiskfilmogtvfond.com).

Before payment of the first instalment the following items shall be submitted:

- Signed contract
- Invoice

Before payment of the final instalment the following items shall be submitted:

- Accounts showing final spend compared with dubbing budget
- Evaluation report regarding the reception of the film in relation to expected results
- A copy (DVD) of the dubbed film
- Invoice

#### 11.6 CREDITS AND ACCOUNTS

From the advertising material it shall be evident that the film has been dubbed with the support of Nordisk Film & TV Fond. Crediting shall be approved by the Fund.

The Fund is, upon request, entitled to documentation of all receipts and costs connected with the dubbing of the film and has the right to audit the producer's / distributor's accounts as part of the control.

## 12. SUPPORT FOR FILM CULTURAL INITIATIVES

MAY BE APPLIED FOR BY THE ORGANISER OF THE INITIATIVE

### 12.1 CONDITIONS FOR GRANTING OF SUPPORT

- Support may be granted for Film Cultural Initiatives in the form of workshops, seminars or festival programmes that may strengthen the competence of the joint Nordic film and TV community.
- Support will only be paid when the initiative has been fully financed.

Any budget changes made after funding has been granted must be approved in advance by the Fund.

Support is provided in the form of either guarantee against loss or as a cash contribution and is thus not subject to reimbursement

### 12.2 APPLICATION

Applications must normally be submitted before the project starts.

Due to the wide variety of Film Cultural Initiatives it is difficult to specify what is needed as relevant basis for an application. Potential applicants are therefore advised to contact the Fund in each case. Applications must be submitted via [www.nordiskfilmogtvfond.com](http://www.nordiskfilmogtvfond.com).

### 12.3 COMMITMENT

The organiser of the initiative will receive a Letter of Commitment from the Fund.

### 12.4 DRAFTING OF CONTRACT

The Fund will draft a Contract for a project that has been granted support.

### 12.5 PAYMENT

Payment of the Fund's support will be determined individually for each project. Normally the Contract will stipulate payment in 2 instalments. In the case of guarantee against loss support will be paid in 1 instalment. In such cases the rules for payment of the last instalment applies.

Material associated with the payment of instalments is submitted via [www.nordiskfilmogtvfond.com](http://www.nordiskfilmogtvfond.com).

Before payment of the first instalment the following items shall be submitted:

- Signed Contract
- Invoice

Before payment of the final instalment the following items shall be submitted:

- Accounts showing final spend compared with budget
- The Fund's evaluation report regarding the reception of the initiative in relation to expected result via [www.nordiskfilmogtvfond.com](http://www.nordiskfilmogtvfond.com)
- Invoice

12.6 CREDITS AND ACCOUNTS

From the advertising material it shall be evident that the initiative has been organised with the support of Nordisk Film & TV Fond. Crediting shall be approved by the Fund.

The Fund is, upon request, entitled to documentation of all receipts and costs connected with the initiative and has the right to audit the organiser's accounts as part of the control





## **APPENDIX 12**

GUIDELINES FOR FILM PRODUCTION SUPPORT

1. GENERAL

The Finnish Film Foundation grants support for professional film production in Finland. The Foundation's goal is to promote high-quality, versatile and original Finnish film production. The support is based on the Act on the Promotion of Film Art (28/2000).

Support can be granted upon application to feature-length, short and serialised fiction films, documentaries, and animated and children's films. The application must be submitted on a pre-printed application form.

Support cannot be granted to television companies or to companies in which a television company holds a share of 15% or more, nor to a state, municipal or church authority or institution, nor to a company in which the state has a majority holding, nor to any organisation or institution comparable to the above. Neither can support be granted for a production that is intended for the marketing of a product, range of products or services, or anything comparable to these.
2. SUPPORT CATEGORIES

2.1. Script support

Script support can be granted to an individual or a team for the writing of a film script. The maximum support per film is **EUR 10,000**.

The applicant must supply the Foundation with a working plan for the script as part of the application.

2.2. Development support

A production company (a registered society in **Finland**) holding the rights to a film in Finland can be granted development support for the film project. The support cannot exceed EUR 100,000 per film. The support can be applied toward e.g. the writing and further development of the script; production, shooting and set design plans, and any other measures required before a budget and the related financing arrangements can be completed.

The applicant must supply the Foundation with the following appendices to the application:

  - A project development plan
  - A development budget and a financing plan
  - A no older than one-month-old certificate of tax liability and proof of paid old-age pension insurance premiums

Only direct costs of the project are included in the development budget. Indirect costs of the applicant's company (rent for fixed offices, fixed data communications costs, etc.) are included in the percentage reserved for administrative costs in the project's budget.

The costs of the project are observed in the budget exclusive of VAT. If the recipient is verifiably not entitled to deduction of VAT, the VAT may be observed in the budget.

Work carried out by the owner of the production company for the project is indicated in the budget as a fixed total compensation.

2.3. Advance support for production

A production company holding the rights to a film in Finland can be granted advance support for production for the completion of the film. Granted production support can cover a maximum of **50%** of

The Finnish Film Foundation  
SUPPORT GUIDELINES  
1 January 2009

Confirmed by the Foundation's Board on 31.12.2008  
**Changes to previous guidelines are in bold**

GUIDELINES FOR FILM PRODUCTION SUPPORT  
GUIDELINES FOR SUPPORT FOR CULTURAL EXCHANGE, EXHIBITION AND  
DISTRIBUTION, AND EDUCATIONAL ACTIVITIES

the film's production costs, including any development support already granted for the project by the Foundation.

Advance support for production cannot be granted for a completed production. A film is considered completed when a finished release print or a TV master of it exists.

The applicant must supply the Foundation with the following documents as part of the application:

- The script
- A detailed budget
- A financing plan
- A production plan, including a production schedule and details about the individuals with primary artistic and fiscal accountability for the project
- A preliminary marketing and distribution plan for cinema distribution in accordance with the model issued by the Foundation
- An information sheet about the film drawn up in accordance with the model issued by the Foundation and a photograph from the film in electronic form
- A no older than one-month-old certificate of tax liability and proof of paid old-age pension insurance premiums

When support is applied for the Finnish part of international co-productions, the applicant must in addition to the aforementioned appendices to the application also deliver the following documents to the Foundation:

- A cooperation contract or deal memo of all the production parties
- A detailed budget for the Finnish producer's share
- A financing plan for the Finnish producer's share of the production
- A financing plan for the whole production
- A production plan for the Finnish producer's share of the production

The budget must cover all direct production costs up to the first release print, including a 7–10% reservation for contingencies. Indirect costs of the production company are included in the percentage reserved for administrative costs in the budget. This share cannot exceed 5% of the production costs and/or the actual costs of the company as indicated in the bookkeeping. The reservation for contingencies and the percentage for administrative costs are calculated on the basis of the actual production costs (not including development costs). The reservation for contingencies as well as the percentage for administrative costs must be fully financed.

The costs of the project are observed in the budget exclusive of VAT. If the recipient is verifiably not entitled to deduction of VAT, the VAT may be observed in the budget.

The salaries of the production company's permanent staff must be indicated in euro in the budget. Work carried out by the owner of the production company for the project is indicated in the budget as a fixed total compensation.

The budget must also cover any production-stage marketing costs, such as publicity, PR and media expenses, and the preparation costs for the related promotional material listed in chapter 6 to be delivered to the Foundation.

Compensation for the use of the producer's own equipment cannot exceed 60% of the current rental rate.

If the production costs of the film exceed EUR 500,000, advance support for production cannot be granted unless a production insurance covering the essential negative, person and equipment risks is taken out for the film project in question.

## 2.4. Marketing and distribution support

Marketing and distribution support can be granted for marketing and distribution costs associated with the Finnish cinema distribution of domestic films and international co-productions. The support can be

granted to production companies holding the rights to the film in Finland, or to a professional distribution company holding the distribution rights to the film. The support is applied for by the party with the main marketing responsibility.

The support can cover up to 50% of the costs, with a maximum of **EUR 80,000** per film.

Support can also be granted separately for the testing of the film and its marketing material. The testing must be conducted by a professional, independent institution. The support can cover a maximum of 50% of the testing costs, but no more than EUR 5,000 per film.

The applicant must present the Foundation with a revised marketing and distribution plan, together with possible test analysis results, before the production of key marketing material is launched. The actual application for marketing and distribution support must be submitted to the Foundation no later than six weeks before the premiere. Before the decision is made, the producer, distributor and representatives of the Foundations go through the marketing plan together.

The applicant must supply the Foundation with the following documents as part of the application:

- A final marketing and distribution plan jointly prepared by the producer and the distributor in accordance with the model issued by the Foundation
- A detailed budget in accordance with the model issued by the Foundation
- A signed distribution contract
- Details about marketing co-operation and partnerships
- A no more than one-month-old certificate of tax liability and proof of paid old-age pension insurance premiums

The support recipient must see to it that the film is subtitled in the official languages of Finland as appropriate for the distribution of the film. When the film is distributed in more than one release print, a copy in Finnish and Swedish is always required.

## 2.5. Post-release support for production

Post-release support for production can be granted on the basis of a domestic film's total number of admissions, to a production company holding the rights to the film in Finland. Post-release support can be granted to a film which the Foundation evaluates as having sufficient domestic content, the domestic theatrical release of which was on 1 January 1997 or subsequently, and which attracted a minimum of 45,000 regular-priced admissions at domestic film theatres during its first year of release. Also admissions for Koulukino showings are taken into account in the calculation of post-release support.

**Post-release support is granted to the sum of EUR 4.00 per each sold regular-priced ticket during the first year of release of the film, starting at 45,001 sold tickets. Tickets sold to Koulukino-screenings are also taken into account when post-release support is calculated. The total amount of the post-release support cannot, however, exceed EUR 200,000 or 50% of the production costs approved by the Foundation. In cases where the film has been granted advance support for production by the Foundation, the post-release support cannot exceed EUR 400,000 and the sum total of the granted advance support for production and the post-release support cannot exceed EUR 800,000 or a maximum of 50% of the production costs approved by the Foundation.**

Post-release support must be applied for within six (6) months from the date when one (1) year has elapsed from the theatrical release of the film.

In order to apply for post-release support, it is required that the applicant delivers a clarification concerning the total costs of the film in question as well as a specification of the implemented financing and its sources, authorised by a certified accountant.

Post-release support must be utilised for film production or development thereof, in accordance with the guidelines for production support. The recipient may use the post-release support to cover the self-financed part of the film, to which the support was granted. The recipient must deliver a written final report concerning the utilisation of the post-release

**support to the Foundation by the date indicated in the support agreement, however no later than two years from the signing of the support agreement.**

The applicant must provide the Foundation with the following documents as part of the application:

- **A utilisation plan for the post-release support**
- A certified accountant's statement verifying the total production costs and a detailed account of obtained financing and its sources.
- The distributor's statement confirming the number of paid admissions at a domestic film theatre during its first year of release.
- The company's latest closing of accounts and a valid extract from the trade register
- A no more than one-month-old certificate of tax liability and proof of paid old-age pension insurance premiums

**A support agreement between the Foundation and the recipient concerning the post-release support must be signed within six (6) months of the support decision.**  
**Post-release support is paid out in two or more instalments, the first instalment subsequent to the signing of the support agreement, and the last instalment of 20% subsequent to the approval of the final report by the Foundation.**

**In cases where the Foundation has granted advance support for production to the film, the guidelines that were valid at the time of the support decision will be applied to the post-release support.**

## 2.6. Difficult and Low-budget Films

The European Commission Cinema Communication (Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of The Regions on certain legal aspects relating to cinematographic and other audiovisual works (2002/C 43/04, COM(2001) 534 final)) states that "aid intensity must in principle be limited to 50% of the production budget".

The restriction will not be applied to difficult and low-budget films. The Commission considers that under the subsidiarity principle it is up to each member state to establish a definition of a difficult and low-budget film according to national parameters.

A film is classified as a difficult film when:

- **it does not seek a large audience, and**
- **it faces special difficulties attracting commercial financing and would not be possible to produce without state aid exceeding 50% of the production budget**

For projects that qualify as difficult or low-budget film, support may be granted as follows:

- Advance production support: maximum of 70% of the film's production costs, including any development support already granted for the project by the Foundation.
- Marketing and Distribution support: up to 70% of the costs, with a maximum of **EUR 80,000** per film. Plus support for the testing of the film and its marketing material covering a maximum of 70% of the testing costs, but no more than EUR 5,000 per film.

## 3. SUPPORT DECISIONS

### 3.1. Provisional Support Decision

With a provisional support decision, the Foundation provisionally reserves support for the applicant. Provisional support decisions can be made only if the applicant has followed the guidelines for earlier support decisions and provided the Foundation with all the required reports in time. If the applicant or an individual or a legal person under contract to the applicant has several projects supported by the Foundation, the above stipulation may be applied to all projects of the applicants in question. Provisional support decisions are based on an evaluation of the entire project in terms of content, expression and actual production, acknowledging the applicant's artistic, production and financial potential to complete the production in question.

When support is applied for the Finnish contribution to an international co-production, the provisional support decision is also influenced by the project's interest in terms of the Finnish audience, the prospects of continued co-operation between the co-producers, and the volume of Finnish contribution and artistic input in the project.

The Foundation may request additional information from the applicant before making its final decision. The provisional support decision expires unless a support agreement satisfactory to the Foundation is signed within the time frames given in paragraph 3.2.

The above regulations for provisional support decisions and the stipulations about support agreements given later in this document do not apply to post-release support for production. The Foundation makes decisions about granting post-release support as explained in paragraph 4.

### 3.2. Support agreement

In the case of script, development and marketing and distribution support, the Foundation and the applicant must sign a support agreement within three (3) months of the provisional support decision.

In the case of production support, the Foundation and the applicant must sign an agreement within six (6) months of the provisional support decision.

The support agreement confirms the budget and the financing plan for the project in question. The confirmed budget and support allocations cannot be changed without the Foundation's written consent. The recipient is accountable for the implementation of the project according to the support agreement.

The agreement on script support cannot be signed unless the Foundation is supplied with the following documents:

- A working plan for the script
- A copyright waiver for the original work, if the script is based on an existing work
- If the script support goes to a team, an agreement between its members covering script copyright issues and the distribution of the support between the team members

The agreement on development support cannot be signed unless the Foundation is supplied with the following documents:

- A development plan
- A budget and financing plan for the development
- Contracts or binding statements confirming that the share of financing from other sources, as indicated in the budget, has been arranged in full and in accordance with the financing plan, and clarification of the recipient's self-financing
- Appropriate contracts with copyright holders
- Other contracts relevant to the project and the support decision

The agreement on provisional support cannot be signed unless the Foundation is supplied with the following documents:

- The script of the film
- A detailed budget confirmed by the Foundation
- A financing plan confirmed by the Foundation
- A liquidity plan for the project, covering gross total project costs and financing indicated in the budget, covering statements confirming that the share of financing from other sources, as indicated in the budget, has been arranged in full and in accordance with the financing plan
- A clarification of self-financing
- Appropriate contracts with copyright holders
- An insurance policy
- Other contracts relevant to the project and the support decision

When support has been granted to the Finnish contribution to an international co-production, the applicant must in addition to the aforementioned appendices to the contract also deliver the following documents to the Foundation:

- A co-operation contract between all co-producers
- A budget detailed for each country

**If the film has been granted development support or advance support for production by the Foundation, the recipient is obliged to indicate that the film has received support from The Finnish Film Foundation in the film's list of credits along with the names of the production advisors.**

Subsequent to consulting the support recipient, the Foundation has the right to sign up the film, to which advance support for production has been granted, to international, non-commercial film events. If the recipient offers the film to similar international events independently and at his own cost, the recipient is obliged to inform the Foundation of this.

The agreement on marketing and distribution support cannot be signed unless the Foundation is supplied with the following documents:

- A final marketing and distribution plan drawn up by the producer and distributor jointly and in accordance with the model issued by the Foundation
- A detailed budget in accordance with the model issued by the Foundation
- A signed distribution plan
- Details about marketing co-operation and partnerships
- Contracts or binding statements confirming that the share of financing from other sources, as indicated in the budget, has been arranged in full
- Clarification of the recipient's self-financing
- Other contracts relevant to the project and the support decision

In the financing plan, the following can be acknowledged as the recipient's self-financing:

- A cash contribution, provided that the producer can present a corresponding bank guarantee or equivalent of it
- Deferment of the producer's and **the other associated film makers' salaries to a reasonable degree**, provided that the subject has given written consent for the deferment
- Use of own equipment as detailed in the budget

When the support recipient is a registered society, the support agreement cannot be signed unless the recipient has supplied the Foundation with the company's latest closing of accounts, verified by its bookkeeper, and a valid, no more than six-month-old extract from the trade register. In addition, the recipient must deliver a no more than three-month-old certificate of tax liability and proof of paid old-age pension insurance premiums. Joint-stock companies must deliver an up-to-date shareholder's register (Limited-liability Companies Act, chapter 3) to the Foundation. If the information in the aforementioned documents has been modified, the Foundation must be notified of the modifications.

The Foundation's support must not be used for purposes other than those detailed in the support agreement.

#### 4. PAYMENT OF SUPPORT

Granted advance support for production will be paid to the recipient in five instalments:

- 20% after the signing of the support agreement
- 50% at the start of shooting
- 10% at the end of shooting once the recipient's interim report that has been drawn up in accordance with the model issued by the Foundation has been approved by the Foundation
- 10% when the work print has been approved by the Foundation
- 10%, or a maximum of EUR 20,000, when the final report has been approved by the Foundation and the promotional items defined in the support agreement have been delivered to the Foundation (if 10% of the support amounts to more than EUR 20,000, the difference will be paid out in the third instalment).

Script support, development support, and marketing and distribution support will be paid in two or more instalments, the first instalment after the signing of the support agreement and the final instalment, 20%, once the final report has been approved by the Foundation.

Post-release support for production is paid the calendar year following the film's cinema release, no later than one month after the Foundation has confirmed the total of post-release support granted for the film in question, and no later than one year after the application has been submitted to the Foundation.

The Foundation reserves the right to deduct any outstanding payments of the recipient before paying out granted support. The Foundation has the right to suspend support payments until further notice, if the recipient has not delivered the appropriate interim report or final report as agreed in the corresponding agreement or in any other contract signed with the Foundation, or otherwise through his actions compromised the completion of the film.

#### 5. MONITORING

The recipient's bookkeeping must be in compliance with the Bookkeeping Act and the Bookkeeping Statute, and be in accordance with sound bookkeeping practice. The recipient is also obliged to arrange the appropriate financial monitoring of the production. The Foundation reserves the right to inspect the recipient's entire bookkeeping and administration at any time.

The recipient must observe the Finnish Film Foundation's guidelines and recommendations on the principles of bookkeeping, closing of accounts and auditing practices in a film production company.

If the monitoring of the project costs indicates changes in the budget or the financing plan, the recipient must notify the Foundation of it immediately and in writing. If project costs are clearly greater than the budget confirmed in the support agreement, the recipient must supply the Foundation with adequate documentation of acquired additional funding. The recipient is also obliged to notify the Foundation in writing about any other relevant artistic or financial changes in the project.

The recipient of advance support for production must supply the Foundation with an interim report drawn up in accordance with the model issued by the Foundation on the production's progress at the end of shooting. The interim report should give detailed information about actual production costs and financing as compared with the budget, together with an estimate on further costs and financing, and an account of the production's progress as compared with the outlined plans. Substantial deviations from the original budget must be accounted for separately. The Foundation reserves the right to request further details it deems necessary for the approval of the interim report from the recipient.

#### 6. FINAL REPORT

The recipient must submit to the Foundation a written final report by the agreed date, but no later than two years after the signing of the support agreement.

For script support, the completed film script is equivalent to the final report.

The final report for development support must include a written account of the implementation of development as compared with the plans together with an account of implemented costs and details on funding. If a new provisional support decision for development and advance support for production has already been made for the film in question, the Foundation can decide that the reports on all related support can be given together.

The final report for advance support for production must contain an account of implemented costs, together with information about implemented financing. The report must indicate the implemented production costs and financing as compared with the original budget. A separate, itemised list must be given for use of the producer's own equipment and any internal forwards made in the cost accounting. The company's indirect costs may be included as administrative costs, the share of which must not exceed 5% of the actual production costs (not including development costs). These internal forwards that are classified for different projects must not exceed the actual costs of the company as stated in the bookkeeping.

The share of contingencies must not exceed their total in the budget confirmed at the signing of the support agreement. If the budget has been exceeded, the difference must be deducted from contingencies. The recipient may retain the remainder of the reservation for contingencies budgeted in the support agreement. A written report on production details as compared with the initial plans must be included in the final report.

Together with the final report for advance support, the recipient must deliver the promotional material specified in the support agreement to the Foundation for promotional purposes.

For cinema releases, the recipient is usually expected to provide the Foundation with:

- 20 DVD copies with English subtitles
- A dialogue list in the original languages and in English
- A synopsis of the film, a word from the director and the director's CV/filmography in both Finnish and English
- A full list of credits for the film
- Photographs of the film and the director, which are suitable for printing

For a TV-distribution film, the recipient is usually expected to provide the Foundation with:

- 20 DVD copies with English subtitles
- A dialogue list in English
- A synopsis of the film, a word from the director and the director's CV/filmography in both Finnish and English
- A full list of credits for the film in Finnish and English
- Photographs of the film and the director, which are suitable for printing

The final report on marketing and distribution support must contain an account of implemented costs and implemented financing. The report must indicate the implemented marketing and distribution costs and financing details as compared with the budget. In addition, a filled-out evaluation form in accordance with the model issued by the Foundation must be appended to the final report.

The detailed account of implemented costs in the final report must be based on the recipient's bookkeeping, implemented legal salary costs, and verified by the bookkeeper. If the total support granted to the project exceeds EUR 20,000, the account of implemented costs must be verified by a certified accountant.

The support recipient is obligated to provide his bookkeeper and accountant with the Finnish Film Foundations Support Guidelines and recommendations for principles of bookkeeping, closing of accounts and auditing to be observed in film production companies (01.01.2007).

The support recipient is also obligated to provide its bookkeeper and accountant with the support agreement, budget, and other appendices to the support agreement of the project in question. If the support recipient neglects this duty, the Film Foundation has the right to deliver the documents in question to the bookkeeper and accountant mentioned in the support agreement.

The Foundation reserves the right to request the recipient to supply any additional reports it deems necessary for the approval of the final report. The Foundation also reserves the right to audit the production's final report. The recipient must ensure that the Foundation's auditors are supplied with all the documents required for the audit.

Based on the final report and the possible audit the Foundation confirms the project's actual costs.

Should the share of development support granted by the Foundation exceed the project's final cost, and the share of advance support for production or marketing and distribution support equal more than 50/70% of the final costs, the Foundation will deduct the difference from the support instalment not yet paid out or recover it from the recipient.

## 7. CANCELLATION OF THE SUPPORT AGREEMENT AND RECOVERY OF SUPPORT

Support recovery follows the stipulations of chapter 5 of the State Aid Act (688/2001). **Recipients of state grants must without delay return state grants or parts thereof, the use of which has been**

**faulty, excessive or evidently unfounded.** The Foundation also reserves the right to cancel the support agreement altogether and to reclaim paid support instalments, if the production is not completed in the manner and schedule outlined in the support agreement or if the recipient has failed to comply with the support guidelines, the terms of the support agreement, or any other related obligation, or through his actions otherwise jeopardised the completion of the film.



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